

HISTORIA

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ANCIENNE · JOURNAL OF ANCIENT HISTORY · RIVISTA
DI STORIA ANTICA

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Redaktion: Prof. Dr. HERMANN BENGTON, Würzburg, Scheffelstr. 5 II.
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Erscheinungsweise: jährlich 4 Hefte zu je 8 Bogen (= 128 Seiten).

Bezugspreis: pro Heft im Abonnement DM 10.—, Einzelheft DM 12.—.

Herstellung: J. J. Augustin, Glückstadt i. Holst.

Gedruckt mit Unterstützung der Deutschen Forschungsgemeinschaft

Printed in Germany

ABHANDLUNGEN

THE CONSTITUTION OF THE FIVE THOUSAND¹

It has commonly been held² that "the constitution of the Five Thousand,"³ under which Athens was governed from about the end of September 411 until about June 410,⁴ altogether denied the franchise to those who were below the hoplite class — that is to say, the Thetes.⁵ This theory, that the regime of the

¹ I wish to express my gratitude to Professors A. Andrewes, K. J. Dover and A. H. M. Jones, and Messrs P. A. Brunt, C. Hignett and R. Meiggs, for reading and criticising the first draft of this paper — without, of course, implying their assent to the views expressed here, which are my own.

² G. Busolt and H. Swoboda, *Gr. Staatsk.* II 909; Busolt, *Gr. Gesch.*² III ii 1509-10; K. J. Beloch, *Gr. Gesch.* II² ii 315; Ed. Meyer, *Gesch. des Alterthums* IV 585, 589-90, with 599-600 & 610-11; H. Bengtson, *Gr. Gesch.* 229-30; W. S. Ferguson in *Camb. Anc. Hist.* V 338-40, 343; G. Glotz and R. Cohen, *Hist. gr.* II 731-2; C. Hignett, *Hist. of the Athenian Const.* (hereafter cited as HAC) 279-80, 378; F. Sartori, *La crisi del 411 A.C. nell' Ath. Pol. di Aristotele* 118, 119 etc.; A. Fuks, *The Ancestral Const.* 86; U. Wilcken in *SB Berl.*, 1935, 59-61; J. Hatzfeld in *REA* XL (1938) 113 n. 1, 120-1, 123; G. Vlastos in *AJP* LXXIII (1952) 189-98; K. von Fritz in *CP* XLIX (1954) 91 n. 15. G. De Sanctis, *Studi di storia della storiogr. greca* 117-8 (reprinted from *Rendic. Accad. Naz. dei Lincei* VI vi, 1930) speaks of a "popular assembly" after the fall of the Four Hundred in 411/10; but this conception seems to be based solely on Wilhelm's dating to that year of IG² 105 (= Tod 91), which is in fact to be dated 407/6, as now shown by B. D. Meritt, *Athenian Financial Documents* (hereafter cited as AFD) 109-14, and in *Class. Stud. pres.* to E. Capps (1936) 246-52; his new text is also printed in *SEG X* 138.

³ In *Thuc.* VIII 65. 3 (referring to the late spring of 411) the oligarchs are represented as advocating that political power should be entrusted to "not more than 5,000, those best able to serve the state with their property and in person." When the coup was effected, at Colonus, ultimate sovereignty was committed either to "the 5,000" (*Ps.-Lys.* XX 13, 16; cf. *Thuc.* VIII 67. 3) or to "those best able to *λητοურγεῖν*, not being less than 5,000" (*Arist., Ath. Pol.* 29. 5). This may represent a concession by the extremists to the moderates (and note the reference to 9,000 in *Ps.-Lys.* XX 13); but Aristotle's source may have been deliberately misleading on such a point (see my remarks in *Historia* III, 1954, 27 n. 1). By the autumn of 411 the 5,000 could be defined as the *ἑπὶ παραχόμενοι* (*Thuc.* VIII 97. 1; *Arist., Ath. Pol.* 33. 1): apparently the term had by now virtually lost its quantitative significance.

⁴ For the chronology, see Meritt, AFD 104-14, 179 (and Busolt, *Gr. Gesch.*² III ii 1508 n. 3). Sartori, *op. cit.* (in n. 2 above) 76-8, believes the government of the 5,000 lasted no more than 5 months; Hatzfeld, *op. cit.* (in n. 2 above), only about 3 months; but their arguments have no weight against Meritt's (see esp. AFD 106-7).

⁵ The usual equation of Hoplites and Zeugites is accepted here. It is almost certainly right, although there is not much actual evidence for it — see *Antiph. & Aristoph. ap. Harp.*, s. v. *Θῆτες*; *Thuc.* III 16. 1; VI 43 (cf. VIII 24. 2); also *Arist., Ath. Pol.* 4. 2-3, where

Five Thousand was a hoplite oligarchy, will here be referred to as "the accepted view." There is in fact no real evidence in favour of it, and it entails certain serious difficulties. It will be maintained here that we cannot be absolutely certain whether or not the franchise under the Five Thousand was limited to the *ὅπλα παρεχόμενοι*, but that it is probable that basic political rights, above all those of attending the assembly and sitting in the courts, were restored to all citizens, although effective control of affairs was reserved to the upper classes, no doubt by giving them exclusive access to *ἀρχαί*, including especially the vital *βουλή*. The absence of political pay, of course, would prevent many of the poorer citizens from fully exercising their right to act as dicasts. But such a constitution would possess the minimum essential characteristics of democracy, as it was understood by the Greeks: namely, the right of all citizens *ἐκκλησιάζειν καὶ δικάζειν*. Since it was a general assembly of all citizens in which supreme political power ultimately resided, and the oligarchic features of the new constitution could be abolished or modified at any time at the pleasure of the assembly, the constitution would be basically democratic. On the accepted view the constitution was essentially oligarchic (though not in any extreme degree), for supreme power lay with a limited number of citizens possessing a certain property qualification. The difference is not merely academic: it is a question of where ultimate sovereignty lay — with the whole citizen body, or with the propertied classes.⁶

I. THE LITERARY SOURCES

We will first review the material in the literary sources which bears upon the nature of the constitution of the Five Thousand, postponing consideration of chapters 30 and 31 of the *Athenaion Politeia* (upon which discussion has usually tended to centre) until a later stage in our analysis, when we will at the same time examine the disappointingly meagre evidence of contemporary Athenian decrees.

There is nothing in the language used by the sources to suggest that under the regime of the Five Thousand the franchise was necessarily or even probably limited to the hoplite class.

the *ὅπλα παρεχόμενοι* are conceived as Zeugites and above. The "Solonian" census classes were presumably assessed by now in terms of money capital — not money income: see my paper on the *eisphora* in *Classica et Mediaevalia* XIV (1953) at p. 41.

⁶ Note the admirable statement of Busolt, *Gr. Staatsk.* I 444 n. 1: "Die Teilnahme aller Bürger an der souveränen Staatsgewalt war das Grundrecht der Demokratie, das sie von der Oligarchie unterschied. Da wo nur ein μέρος, nicht das *ξύμπαν* an der Staatsgewalt teilnahm, bestand Oligarchie (Thuk. VI 39). Daher konnte wohl eine gemäßigt demokratische Verfassung die Befähigung zur Ämterbekleidung von einem Census abhängig machen, nie jedoch (trotz Aristot. *Pol.* IV 9 p. 1294 B v. 3) das Stimmrecht in der Bürgerversammlung. . . . Eine Verfassung, welche die politische Berechtigung auf eine Minderheit beschränkte, war eine Oligarchie."

1. The words used by Thucydides,⁷ τοῖς πεντακισχιλίοις ἐψηφίσαντο τὰ πράγματα παραδοῦναι, are quite vague. This and similar phrases in his History and in other authors (τὰ πράγματα ἔχειν, ἐπιτρέπειν, ἐνδιδόναι and so forth) can sometimes refer to exclusive possession of the franchise;⁸ but it is sometimes uncertain whether they imply this,⁹ and sometimes they cannot.¹⁰ All such phrases signify essentially *control of affairs*: the whole context must be examined before we can tell what political rights, if any, are possessed by those who are not members of the governing body. Thus οἱ ἔχοντες τὰ πράγματα who attack the demos at Corcyra in 427 are merely those who are in control of the government.¹¹ When the Athenian demos in 430/29 reinstated Pericles as strategos καὶ πάντα τὰ πράγματα ἐπέτρεψαν, no one will suppose that the demos transferred to Pericles any of its essential prerogatives.¹² And when Thucydides¹³ says that the successors of Pericles ἐτράποντο καθ' ἡδονὰς τῷ δήμῳ καὶ τὰ πράγματα ἐνδιδόναι, he means that in practice they handed over the direction of state affairs to the demos. In the oligarchic propaganda of the winter of 412/11, before the extremists had fully shown their hands, the Athenians were to "have a more moderate constitution and confine state office ἐς ὀλίγους."¹⁴ (Evidently nothing was said openly, at this stage at any rate, about limiting the franchise). If access to ἀρχαί, including above all membership of the council, were restricted to a particular class, the ὅπλα παρεχόμενοι, that class could be said to have control of τὰ πράγματα. The vote to give control of affairs to the Five Thousand may very well have been deliberately couched in the imprecise form of words used by Thucydides,¹⁵ τοῖς πεντακισχιλίοις τὰ πράγματα παραδοῦναι, with or without the addition of the words, εἶναι δὲ αὐτῶν ὁπόσοι καὶ ὅπλα παρέχονται. Once this decision was taken, it was left to the nomothetai to produce detailed

⁷ VIII 97. 1.

⁸ See, e. g., Thuc. III 62. 3; Ps.-Lys. XX 13; Xen., Hell. II iii 18; Ps.-Herodes, Περὶ πολιτείας 30–31; cf. Thuc. III 28. 1.

⁹ As in Thuc. VIII 48. 1; also 65. 3, having regard to 53. 3 (ἐς ὀλίγους... τὰς ἀρχάς) and 66. 1 (εὐπρεπὲς πρὸς τοὺς πλείους).

¹⁰ See the next three notes, also Thuc. VIII 82. 1; Xen., Hell. I vi 13; Arist., Ath. Pol. 38. 2. In Thuc. III 30. 3; V 62. 2; VII 48. 2; 49. 1; VIII 82. 1, τὰ πράγματα is used in regard to the gaining of political control of one city by another.

¹¹ Thuc. III 72. 2. It is obvious from III 70. 3–6 that at this time political rights at Corcyra were not limited to an oligarchy.

¹² Thuc. II 65. 4. This is so, even if (as some have thought) Pericles was made αὐτοκράτωρ for a certain range of activities, since the assembly could always intervene and take away any special powers it had conferred. We must not draw too sweeping conclusions about P.'s powers in 431 from the fact that he was able for perhaps 2 or 3 weeks (not more, in view of II 18; 23. 1, 3; with 57. 2; & cf. III 26. 3) to prevent the assembly from meeting. The inescapable fact is that after this he was condemned to a fine, and presumably deprived for a time of his generalship (II 65. 4).

¹³ II 65. 10.

¹⁴ Thuc. VIII 53. 3. In 54. 1, τὸ περὶ τῆς ὀλιγαρχίας evidently refers back to καὶ ἐς ὀλίγους μᾶλλον τὰς ἀρχὰς ποιήσομεν (53. 3.) And see 53. 1: μὴ τὸν αὐτὸν τρόπον δημοκρατούμενοις.

¹⁵ VIII 97. 1; cf. Arist., Ath. Pol. 33. 1.

proposals for the final approval of the assembly at the *πυκναὶ ἐκκλησίαι* which followed¹⁶.

2. As for the Athenaeion Politeia, only a hasty and superficial reading of 33. 1-2 and 34. 1¹⁷ will elicit any evidence in favour of the accepted view of the constitution of the Five Thousand. The Athenians put down the Four Hundred, we are told, *καὶ τὰ πράγματα παρέδωκαν τοῖς πεντακισχιλίοις τοῖς ἐκ τῶν ὅπλων, ψηφισάμενοι μηδεμίαν ἀρχὴν εἶναι μισθοφόρον*. Here we have almost the very words of Thucydides. The last sentence of chapter 33 reads, *δοκοῦσι δὲ καλῶς πολιτευθῆναι κατὰ τούτους τοὺς καιροὺς, πολέμου τε καθεστῶτος καὶ ἐκ τῶν ὅπλων τῆς πολιτείας οὔσης*. If this passage stood alone we might well take it to mean that no one below hoplite status enjoyed the basic political rights of a citizen. But we must not jump to the conclusion that *πολιτεία* here has its common meaning of "citizenship, political rights, the franchise."¹⁸ It is used on other occasions in the Ath. Pol. to mean no more than "control of the state," notably in the very next sentence: *τούτους μὲν οὖν ἀφείλετο τὴν πολιτείαν ὁ δῆμος διὰ τάχους*.¹⁹ We cannot, then, decide on the evidence of the Ath. Pol. alone whether *πολιτεία* in 33. 2 means bare political rights, or direction of affairs.

3. In the Pro Polyrato (Ps.-Lys. XX), our earliest literary source of any length²⁰ for the events of 411/10, the two passages in which the Five Thousand are mentioned (*ὁμῶν ψηφισαμένων πεντακισχιλίοις παραδοῦναι τὰ πράγματα*, § 13; and *ὁμεῖς αὐτοὶ πεισθέντες ὑπὸ τούτων παρέδοτε τοῖς πεντακισχιλίοις*, § 16) quite clearly refer to the setting up of the oligarchy of the Four Hundred in the early summer of 411; and the speech contains no allusion whatever to the position or activities of the Five Thousand after the fall of the Four Hundred.

¹⁶ Thuc. VIII 97. 2.

¹⁷ It is not proposed here to make any use of Ath. Pol. 41. 2, in view of the uncertainty of the text. The London papyrus reads *ὀγδόη δ' ἡ τῶν τετρακοσίων κατάστασις, καὶ μετὰ ταύτην, ἐνάτη δέ, δημοκρατία πάλιν*. If this is right, the constitution of the 5,000 is treated as a restoration of democracy. But the Greek is very queer: *καὶ μετὰ ταύτην, ἐνάτη δέ* is hard to swallow. Some would therefore delete *καὶ μετὰ ταύτην*. However, if we read *καὶ <ἡ> μετὰ ταύτην*, as in H. Oppermann's Teubner text, or, with Wilcken, *καὶ μετὰ ταύτην <ἡ τῶν πεντακισχιλίων>*, ἐνάτη δὲ κτλ (cf. *δεκάτη δ' ἡ τῶν τριάκοντα καὶ ἡ τῶν δέκα τυραννίς*: 41. 2), we have the constitution of the 5,000 bracketed rather with that of the 400, the real change coming only with the restoration of full democracy. It would be unsafe to base any argument on this passage.

¹⁸ As it apparently does, for example, in Lys. XXXIV 3, with Dion. Hal., Hypoth. ad id., from which we may conclude that Phormisius was proposing actually to disfranchise all except landholders.

¹⁹ Arist., Ath. Pol. 34. 1 (on the meaning of these words see n. 45 on p. 10 below). The other passages in the Ath. Pol. are 20. 1 (Arist. certainly believed that τὸ πλῆθος already enjoyed the basic political rights of citizenship); 29. 1 (first occurrence); probably 21. 2 (in view of 20. 1). In 15. 2 and 29. 1 (last word) the meaning of *πολιτεία* is not clear.

²⁰ Of Antiphon's speech in his own defence (see n. 57 on p. 12 below) only small fragments remain.

The appointment of Polystratus as *katalogeus* was certainly before the fall of the Four Hundred:²¹ the vote to give power to the Five Thousand, whom the *katalogeis* were to enrol, cannot have been later than the appointment of the *katalogeis*, and § 13 of the speech, using the aorist participle, shows explicitly that it was earlier. It must have been passed on the same day, at Colonus. The reference to the Five Thousand in § 16 must also be taken as referring to the period of the Four Hundred, since it is to the influence of the latter (*πεισθέντες ὑπὸ τούτων*) that the speaker attributes the decision to hand over to the Five Thousand. The statement in *Ath. Pol.* 29. 5 that the Athenians gave power for the duration of the war to "those, not less than five thousand in number, best able to give military and financial service to the state," must be substantially correct. It receives valuable support from the two passages in the *Pro Polystrato*. Such a decision could only have been taken at the Colonus meeting: the oligarchs, once they were in the saddle, would naturally have been anxious to avoid summoning any further assemblies. Thucydides ignored the decision just mentioned as a piece of window-dressing; the only provision about the Five Thousand at this time in which he was interested was that which made the convening of the Five Thousand depend upon the will of the Four Hundred. But of course the very fact that Thucydides mentions such a provision does much to confirm the statements of Aristotle and the *Pro Polystrato*, that the Five Thousand (an expression Thucydides had defined earlier, in VIII 65. 3) were indeed named as the ultimate repositories of power in the decrees passed at the time the Four Hundred were set up — for otherwise why should there be a provision for the Four Hundred to convene the Five Thousand in due course? At any rate, it is certain that the allusions to the Five Thousand in the *Pro Polystrato* apply only to the period of the Four Hundred and are not evidence for the regime of the Five Thousand. The form of words used in the decree passed at Colonus may very well have been deliberately left rather vague: *τοῖς πεντακισχιλίοις* (with or without more precise definition) *τὰ πράγματα παραδοῦναι* would have done very nicely, from the point of view of the leaders of the revolution.

4. Xenophon does not deal directly with the regime of the Five Thousand, but he may be alluding to it indirectly in the speech he puts into the mouth of Theramenes, a member of the Four Hundred (and later of the Thirty) who took a leading part in bringing the Five Thousand into power. Theramenes' words, spoken in his own defence in 404/3, are *τὸ μέντοι σὺν τοῖς δυναμένοις καὶ μεθ' ἑπῶν καὶ μετ' ἀσπίδων ὠφελεῖν διὰ τούτων τὴν πολιτείαν πρόσθεν ἄριστον ἡγούμην εἶναι καὶ νῦν οὐ μεταβάλλομαι*.²² Even if this passage was intended

²¹ See Hignett, *HAC* 366–7.

²² *Xen., Hell.* II iii 48. (The MS text, which contains a particularly clumsy anacoluthon, can hardly be right, and we must surely adopt some such emendation as Dindorf's *διατάττειν* for *διὰ τούτων*). The whole of § 48 has some relevance. Theramenes, in *Xen.*'s eyes,

by Xenophon to refer to the actual constitution of the Five Thousand (in which he nowhere else shows any interest), it is far too vague to give us any further information about it.

5. The relevant passage in Diodorus²³ reads, Ἀθηναῖοι τὴν ἐκ τῶν τετρακοσίων ὀλιγαρχίαν κατέλυσαν καὶ τὸ σύστημα τῆς πολιτείας ἐκ τῶν πολιτῶν συνεστήσαντο. Whatever the text as transmitted to us may mean, it gives no support to the accepted view.²⁴

6. Those who feel confident, in view of Thucydides VIII 97. 3, that Critias's decree recalling Alcibiades was passed in the autumn of 411 may well feel that the words ἐν ᾗπασιν εἶπον in the poem of Critias quoted by Plutarch, Alcib. 33. 1, could only have been used of a full assembly open to all citizens. However, as Andrewes²⁵ has pointed out, the decree to which Critias refers may be a later one, passed in 408/7; and this point cannot be pressed.

There is no more literary evidence of any value, except of course chapters 30 and 31 of the Ath. Pol., to be considered later.

II. DIFFICULTIES IN THE ACCEPTED VIEW

We can now consider a number of difficulties which, cumulatively, must destroy all confidence in the accepted view.

1. When Thucydides says of the constitution of the Five Thousand, μετρία ἦ τε ἐς τοὺς ὀλίγους καὶ τοὺς πολλοὺς ξύγκρασις²⁶ ἐγένετο, he is representing it as a reasonable mixture, a fair blend, of the interests of the Few and the Many. The preposition ἐς is used in exactly the same sense ("for the benefit of, into the hands of"), and in much the same kind of context, as in Pericles' Funeral Speech,²⁷ where Athens is called a democracy διὰ τὸ μὴ ἐς ὀλίγους ἀλλ' ἐς πλείονας οἰκεῖν. To say that Thucydides is speaking of a "compromise between oligarchy and democracy" is a potentially misleading paraphrase: Thucydides refers to a "mixture," not a "compromise," and to "the Few and the Many," not to "oligarchy and democracy." Now it does not seem to have been noticed that on

objected equally to government by the ἄποροι and to τὸ ὑπ' ὀλίγων τυραννεῖσθαι. Cf. also §§ 17, 18-19: Theramenes thought that οἱ μετέχοντες τῶν πραγμάτων (a phrase which in this case probably means possessors of citizen rights — but see notes 9-13 on p. 3 above) ought to be more than 3,000. ²³ XIII 38. 1.

²⁴ It might be made to do so by emending πολιτῶν to ὀπλιτῶν, with Krüger; but the expression οἱ ὀπλῖται is hardly ever used in the sense of οἱ ὅπλα παρεχόμενοι (see, however, Arist., Pol. 1305b 33). Other emendations suggested have been ἐκ τῶν πολιτῶν παντῶν (Schenkl), ἐκ τῶν πολλῶν (Unger). But no firm inference can be drawn from hazardous emendations.

²⁵ In JHS LXXIII (1953) 3 n. 7.

²⁶ This is of course the first appearance in extant literature of the concept of the "mixed constitution," which was to play so large a part in later thought and receives an almost universal chorus of praise, Tacitus (Ann. IV 33. 1) being almost the only discordant voice.

²⁷ Thuc. II 37. 1.

the accepted view the Thetes, the Many par excellence,²⁸ were altogether excluded from political rights and therefore could not legitimately be described as having any share at all in the constitution.

When contrasted in such a way, the expressions "the Few" and "the Many" are virtually technical terms and must be understood in a social sense.²⁹ The Few are the upper classes, essentially the propertied classes,³⁰ who commonly thought that they should control affairs of state. In some contexts they may be merely a handful of aristocrats; at the other extreme they can be as large a body as the hoplite class — as they probably are here.³¹ Similarly, the Many are the lower classes, the poor, who in general wanted full democracy, in which, of course, they themselves would be the majority and would in theory be dominant. When in such a case as this we are confronted with the Few and the Many, we are dealing essentially with rival claimants for power. The language used by Thucydides (μετρία . . . ξύγκρασις) implies that the Many, like the Few, got some degree of power. The accepted view of the constitution of the Five Thousand, on the other hand, involves one of two assumptions: either Thucydides is — absurdly — applauding as a fair "mixture" a regime which in fact gave no

²⁸ Not so much because they exceeded the ὅπλα παρεχόμενοι in number (at Athens, where conditions were exceptional, the two groups in the late 5th century may have approximately balanced each other), but because the Thetes were the poorest citizens, and the term οἱ πολλοί, used in a political context, means essentially the poorer citizens rather than the majority: see below and the next note but one. We have no knowledge of the number of Thetes in 411 — or indeed at any other time, except perhaps in 322. If in 411 there were some 9,000 who could claim to belong to "the 5,000" = the ὅπλα παρεχόμενοι, there must have been at least as many Thetes. We do not know what proportions of Thetes and of hoplites were at Athens or serving abroad respectively in 411. The hundred-plus ships in service (see Thuc. VIII 30. 2, with 39. 3 & 42. 4; 13) would contain over 20,000 men, of whom the vast majority would be below hoplite status; but we have no means of knowing how many of these were Athenian citizens. Doubtless in Sicily far more Thetes had been lost than hoplites, there being only 2,700 of the latter in the two expeditions of 415 and 413 (Thuc. VI 43; VII 20. 2). If Dion. Hal., Hypoth. ad Lys. XXXIV, is right in saying that there were in c. 403/2 about 5,000 entirely landless Athenians, then there were probably several thousands more who owned insufficient land to qualify for the Zeugite class. We cannot, of course, tell whether the proportion of Thetes was greater or less in 403/2 than in 411. There had been further losses in the Ionian War, notably at Aegospotami, where the 3,000 (Plut., Lys. 11 & 13) or 4,000 (Paus. IX 32. 9) Athenian prisoners — no doubt largely Thetes — were massacred. On the other hand, many of the cleruchs and colonists dispossessed in 405/4 may have swelled the number of Thetes in 403/2.

²⁹ Ferguson in Camb. Anc. Hist. V 340 and Sartori, op. cit. (in n. 2 on p. 1 above) 119, entirely miss the point.

³⁰ This is absolutely fundamental. See my analysis in *Historia* III (1954), at pp. 21-30, esp. the discussion on pp. 21-2 of Arist., Pol. 1279b-80a, an important passage in which the essentially economic character of the ὀλίγοι-πολλοί contrast is made explicit. cf. 1290a 30-62.

³¹ Aristotle (Pol. 1274a 18-21) can apply the expression οἱ γνώριμοι καὶ οἱ εὐποροὶ to all Athenians above the Thetic class — i.e., the ὅπλα παρεχόμενοι.

rights at all to the Many (or to the bulk of the Many), or he is ignoring the very existence of the Thetes and using the expression "the Many" in a uniquely narrow sense, to mean the ordinary hoplites. But if we accept the latter interpretation, we must also suppose that special political rights were reserved to an even smaller group ("the Few," as distinct from the hoplite "Many") — an assumption which is hard to accept, in the light of what we know from Thucydides about the political situation at Athens in the autumn of 411, when the hoplites were asserting themselves and would surely have had no inclination to give special powers or privileges to a smaller body, the Knights for example. No smaller identifiable body than the Five Thousand (except of course the Four Hundred, who had now disintegrated) makes any appearance as a claimant for power at this time.

In the fourth century and later we often find expressions of admiration for the "mixed constitution," but none of them is formulated in quite the same terms as this earliest of known examples: as a rule, the constitution they praise is said to be a mixture of *oligarchy and democracy* — a rather more vague expression of the same basic idea. Aristotle in particular makes great play with the notion. The precise ingredients of the mixture as he sees it are not always very clear, but although in some passages he can propose a genuine mixture of oligarchic and democratic elements,³² in others he is simply advocating a moderate oligarchy.³³ However, the imaginary constitution of the fourth century which is a mixture of oligarchy and democracy is only indirectly relevant to our subject and no more need be said about it here.³⁴

³² As in Pol. 1294a 37–b1 (where the poor are to be paid for service in the courts and the rich fined for failure to serve); 1294b 7–13 (where magistrates are to be elected by vote but there is to be no property qualification for office. Note that Arist. here gives this as a feature of a *politeia* or *mixed* constitution, whereas in Pol. 1291b 39–40 he rightly numbers among the varieties of *democracy* a constitution which sets a low property qualification for office — but, it is understood, none for voting in the assembly). Constitutions having these features would be democratic rather than oligarchic, because of the absence of a property qualification for the exercise of basic political rights (cf. Arist., Pol. 1293b 33–6).

³³ As in Pol. 1297b 1–6 (the *ὅπλα ἔχοντες* alone are to rule — although even here those who possess the franchise must outnumber those who do not. This is not specifically called by Arist. a "mixed" constitution); 1294b 2–6. In the latter passage we have the essential element of the constitution of the 5,000, according to the accepted view of that constitution — a moderately high property qualification for attending the assembly — given as an example of *σύνθεσις καὶ μίξις* (1294a 35–6), although it is admittedly τὸ μέσον rather than κοινόν (1294b 4–6), a mean or compromise rather than a mixture. But this passage is unique in Arist.: he is in effect cheating, by giving as a kind of "mixed" constitution one which in reality lacks altogether the essential feature of democracy and is simply a moderate oligarchy (see the previous note). There is no reason to suppose that Thuc. would have seen any ξύγκρασις here.

³⁴ See Paula Zillig, *Die Theorie von der gemischten Verfassung in ihrer literarischen Entwicklung im Altertum* (1916); K. von Fritz, *The Theory of the Mixed Constitution in Antiquity* (1955).

2. Even after the "softening-up" effected by the oligarchic "Terror" at Athens in the spring of 411,³⁵ the mass of democratic Thetes had evidently not been so completely cowed as to be willing to vote the Four Hundred into power without opposition. If all opposition had been crushed, there would have been no necessity for the oligarchs to take the extreme step of convening the vital assembly at Colonus, where only cavalry and hoplites could attend, for fear of the Spartans. Once the oligarchy of the Four Hundred began to lose its grip on the situation, as it did during the building of the wall at Eëtionēia, the spirits of the common people would have revived. Besides the hoplites, Thucydides³⁶ tells us, many men from the Peiraeus (Thetes, evidently) joined in the demolition of the wall. Then comes a very striking passage (VIII 92. 11), the significance of which seems to have been overlooked. The slogan given out to the common people (πρὸς τὸν ὄχλον ἡ παράκλησις) was that "everyone who wanted the Five Thousand to rule instead of the Four Hundred" should come and share in the task of pulling down the wall. But Thucydides makes it clear that in his opinion there was no general desire, even among the hoplites who were leading the active opposition to the Four Hundred, that the as yet non-existent Five Thousand should rule: what they really wanted was an outright democracy, only they were afraid to say so (ἐπεκρύπτοντο γὰρ ὁμῶς ἔτι τῶν πεντακισχιλίων τῷ ὀνόματι, μὴ ἀντικρυς δῆμον ὅστις βούλεται ἄρχειν ὀνομάζειν, φοβούμενοι μὴ τῷ ὄντι ὥσι καὶ πρὸς τινα εἰπῶν τίς τι ἀγνοίᾳ σφαλῇ). A few days later the Four hundred were deposed. It is very difficult to believe that a hoplite oligarchy would have been set up, when there was a strong movement in favour of a return to democracy even within the hoplite class. The whole situation had changed since the days of the "Terror" and the assembly at Colonus, when the Five Thousand were given ultimate control of the state.³⁷ The common people, although they were regaining confidence, were now without recognised and prominent leaders; and just as they had in 413 fettered their own discretion by appointing the Probouloi,³⁸ so now it is understandable that they might acquiesce in a regime which still denied them political pay and entrusted the effective control of affairs to the hoplite class; but why should they have put up with complete exclusion from the franchise, especially if not even the ordinary hoplite now wanted the Five Thousand to "rule" in the sense in which the Four Hundred had "ruled"? As Wilcken realised, the language used by Thucydides suggests that the assembly at which the Athenians deposed the Four Hundred and voted to hand over the conduct of affairs to the Five Thousand was a general assembly of all citizens.³⁹

³⁵ See *Historia* III (1954) 26-8.

³⁶ VIII 92. 10.

³⁷ See pp. 6 above.

³⁸ Thuc. VIII 1. 3.

³⁹ Thuc. VIII 97. 1; Wilcken, *op. cit.* (in n. 2 on p. 1 above) 52-3. Thuc. uses ἐκκλησία and ἐκκλησιάζειν several times of extraordinary assemblies of the hoplites at Athens (VIII 93. 1; 93. 3-94. 1) and of the fleet at Samos (76. 2; 77; 81. 1, 2; 86. 1 f.).

This makes a vote to set up a hoplite oligarchy even more unlikely. And would not restriction of the franchise have greatly angered the fleet, which was overwhelmingly democratic in feeling?

3. In the spring of 411 what the moderate oligarchs had wanted was something like the *πάτριος πολιτεία*, the ancestral constitution, conceived as the constitution of Solon or Cleisthenes. Hence the rider of Cleitophon, a leading member of this group, to the decree of the Athenian assembly appointing the thirty *syngrapheis*⁴⁰ ordered these officials to search out the *πάτριοι νόμοι* which Cleisthenes established when he set up the democracy. Aristotle's comment is, *ὡς οὐ δημοτικὴν ἀλλὰ παραπλησίαν οὔσαν τὴν Κλεισθένους πολιτείαν τῇ Σόλωνος*.⁴¹ But according to the tradition preserved both in the *Ath. Pol.* and in the *Politics* of Aristotle⁴² the Thetes had the franchise in the Solonian constitution, and could sit in assembly and courts, although they were denied access to all *ἀρχαί*. If, then, this was the constitution desired by the moderate oligarchs in the spring of 411, when they were still co-operating with the extremists, why should the moderates in the autumn of 411, when the leading extremists were mostly dead or in exile, and they themselves were the dominant group, wish to set up a constitution which, denying even elementary political rights to the Thetic class, was far more oligarchic even than that of Solon?

This argument is a strong one, and its force is in no way weakened if one believes the Solonian constitution, as it appears in the *Atthidographic* tradition, to be itself largely a product of the propaganda of 412/11 and the years following,⁴³ for it now becomes all the more likely that the "constitution of Solon"⁴⁴ is a mere reflection of the actual constitution of the Five Thousand, in which the Thetes cannot then have been disfranchised.

4. With the possible exception of one brief sentence in the *Ath. Pol.*,⁴⁵ all the sources are completely silent about the restoration of full democracy in the

⁴⁰ We must accept *Arist., Ath. Pol.* 29. 2; *Androt., FGrH IIIB* 324 F 43; *Philoch., ibid.* 328 F 136, in preference to our texts of *Thuc.* VIII 67. 1 (ten *syngrapheis*). The attempt of Mabel Lang in *AJP* LXIX (1948) 272-89, supported by M. Cary in *JHS* LXXII (1952) 56, to reconcile *Thuc.* and *Arist.*, in this and other respects, is a complete failure. For the principal reason for the general inferiority of *Arist.*'s account of the revolution of the 400, see *Historia* III (1954) 27 n. 1.

⁴¹ *Ath. Pol.* 29. 3. For a useful discussion of the role played by Solon in late-5th and 4th century propaganda, see Fuks, *op. cit.* (in n. 2 on p. 1 above) 14-25.

⁴² *Ath. Pol.* 7-9; *Pol.* 1273b 35-74a 21; 1281b 32-4.

⁴³ This view has recently been stated by Hignett, *HAC*, esp. chaps. i and iv.

⁴⁴ Not the "constitution of Draco" in *Ath. Pol.* 4, which is very probably of 4th rather than 5th century origin: see the admirable analysis of Fuks, *op. cit.* 92-7.

⁴⁵ 34. 1: *τούτους μὲν οὖν ἀφείλετο τὴν πολιτείαν ὁ δῆμος διὰ τάχους*. Does this refer to the putting down of the 400 or of the 5,000? The latter used always to be taken for granted, but the former has recently been suggested by K. von Fritz and E. Kapp (*Arist.*'s *Const.* of *Ath.* 180-1 n. 117; cf. 171 n. 79), who give only a very brief statement of their case. It is worth while examining the question here: see Appendix (pp. 22 below).

summer of 410.⁴⁶ This is distinctly odd, if it involved such a vitally important step as the restitution of the franchise to the Thetes. Furthermore, apart from Thucydides and the Ath. Pol. the sources virtually never notice the existence of the regime of the Five Thousand. As Ferguson^{46a} has rightly observed, "In the tradition preserved in the Attic Orators (in which the memory of the Four Hundred was kept alive by frequent expressions of condemnation) the regime of the Five Thousand is strangely forgotten; it was blurred with the democracy that succeeded it."

5. No one who reads the Pro Polystrato without preconceived ideas about the constitution of the Five Thousand would ever imagine that a hoplite oligarchy had intervened between the rule of the Four Hundred and the restoration of full democracy. The first trial of Polystratus, at which he was heavily fined, is referred to in § 22 as having occurred "immediately after the rule of the Four Hundred," and in § 14 it is implied that it took place soon after the return of the accused from Eretria, when ἤδη μετεπεπτώκει τὰ πράγματα (that is to say, the Four Hundred had just fallen), and hence during the early part of the government of the Five Thousand.⁴⁷ Wilamowitz maintained that the second trial, at which the Pro Polystrato was delivered, must be dated at or just before the return of full democracy; but his opinion was based entirely on subjective grounds⁴⁸ and must be set aside. The Pro Polystrato can only have been spoken after the return of full democracy: the use of δημοτικός (§ 22) and δημοτικώτερος (§ 13) in a favourable sense, the oft-repeated phrase τὸ πλῆθος τὸ ὑμέτερον (§ 2 twice, 4, 8, 10, 16, 19, 26, 27), and the curious νῦν δὲ ἡνίκα αὐτὸς ἑαυτῷ εὐνούστατός ἐστιν ὁ δῆμος (§ 17) make it quite clear that the speech was delivered before a completely democratic court; and, as Ferguson⁴⁹ noticed, expressions such as ὑμῶν ψηφισαμένων πεντακισχιλίοις παραδοῦναι τὰ πράγματα (§ 13) and ὑμεῖς αὐτοὶ πεισθέντες ὑπὸ τούτων παρέδοτε τοῖς πεντακισχιλίοις (§ 16) are unthinkable if the Five Thousand were still in control of the government. The Pro Polystrato, therefore, must have been delivered after the restoration of full democracy in the summer of 410. Now there is not the slightest hint in the speech that a hoplite oligarchy of "the Five Thousand" had ruled Athens in succession to the Four Hundred. If the court which had earlier condemned Polystratus had been one from which the Thetes were excluded (as it should have been, on the accepted view),⁵⁰ the failure of the speaker to cast discredit

⁴⁶ Ps.-Lys. XX; Arist., Ath. Pol.; Xen., Hell.; Diod.; Plut., Alc.

^{46a} In Mél. Glotz I 364 n. 1.

⁴⁷ Beloch, Gr. Gesch. II² ii 324, gives no valid reason for placing the first trial after the return of full democracy.

⁴⁸ Mainly, it seems, on the ground that "die Erfolge des Alkibiades und die dadurch ganz veränderte Stimmung nirgends zu spüren sind" (Arist. u. Athen II 361).

⁴⁹ In Mél. Glotz I 359 n. 4 Ferguson adds other arguments which have some weight.

⁵⁰ See, e.g., Ferguson, op. cit. 358. Arist., Pol. 1305b 34, can envisage oligarchies in which τὰ δικαστήρια μὴ ἐκ τοῦ πολιτεύματος ἐστί, but those who believe the constitution

on that court as not being a fully democratic popular dicastery would be hard to understand. It is worth noticing here that the decree of Andron for the trial of Antiphon and his associates,⁵¹ which certainly belongs to the period of the Five Thousand (and will be further discussed later) twice speaks of sending the accused εἰς τὸ δικαστήριον ("to the appropriate jury-court"), the normal expression under the democracy.⁵²

6. In Thucydides,⁵³ as in Diodorus,⁵⁴ ἡ ὀλιγαρχία comes to an end with the fall of the Four Hundred; according to another passage in Thucydides,⁵⁵ it is ὁ δῆμος which condemns Antiphon; and in the Ath. Pol.⁵⁶ it is perhaps ὁ δῆμος which deposes the Four Hundred. Antiphon,⁵⁷ defending himself against a charge of treason before a dicastery, under the regime of the Five Thousand, contrasts the "oligarchy" of the Four Hundred with ἡ δημοκρατία — an expression which presumably extends to the constitution existing at the time the speech was delivered. These statements, taken by themselves, would create some slight presumption that the regime which followed the rule of the Four Hundred was in essence a democracy, in which all citizens sat in the assembly and the courts.⁵⁸

7. The archon eponymus elected by the Four Hundred, Mnesilochus, was deposed in the autumn of 411, after he had been in office for only two months, and replaced by Theopompus.⁵⁹ But although the restoration of full democracy very probably took place before the beginning of the archon-year 410/09, Theopompus was not displaced;⁶⁰ and this may suggest that he had not been elected only by the Five Thousand and that the return to the old democracy was not felt to be such a vitally important transformation. However, the point must not be pressed, as Theopompus's year could not have had many weeks to run when the democracy was finally restored.

None of these objections to the accepted view of the constitution of the Five Thousand is in itself decisive, but taken together they are very strong indeed. They could be outweighed only by explicit evidence of the limitation of the franchise under this constitution. No such evidence exists.

of the 5,000 to have been a hoplite oligarchy will hardly maintain that nevertheless the Thetes sat in the courts.

⁵¹ See n. 65 on p. 14 below.

⁵² As in Andoc. I 17; Arist., Ath. Pol. 56. 6, 7 etc. The expression does not imply, of course, that only one dicastery existed.

⁵³ VIII 98. 4.

⁵⁴ XIII 38. 1-2.

⁵⁵ VIII 68. 2. The text is unfortunately doubtful. ⁵⁶ 34. 1: see Appendix, pp. 22 below.

⁵⁷ Antiphon's Apology may be consulted in K. J. Maidment's *Minor Attic Orators* I 294-6.

⁵⁸ This argument must not be over-stressed. Thuc. VIII 64. 5 can apply the oligarchic catchword σωφροσύνη to the regimes set up in the allied cities by Peisander and Diitrephes, which may have been something in the nature of hoplite oligarchies; and he and other writers were perhaps capable of referring to a hoplite πολιτευμα as ὁ δῆμος.

⁵⁹ Arist., Ath. Pol. 33. 1.

⁶⁰ And see Ferguson, *op. cit.* (in n. 49 on p. 11 above) 364 n. 1. Contrast Andrewes, *op. cit.* (in n. 25 on p. 6 above) 2-5.

All difficulties are resolved if we assume that when the Four Hundred were deposed in the autumn of 411 there was no limitation of the franchise (whatever the situation may have been under the Four Hundred),⁶¹ but that the council, the key institution of the democracy, and perhaps all other offices; were limited to the upper classes. Very probably additional powers were conferred upon the council, and of course there was no political pay. There may also have been other provisions of a moderately oligarchic character. It is likely that all citizens could serve as dicasts, but of course the absence of pay would tend to exclude a good many of the Thetes.

The expressions used by Thucydides and Aristotle are much more naturally interpreted in this way, and all the problems mentioned above disappear. Thucydides' description of the constitution as a fair mixture of the interests of the Few and the Many becomes intelligible: the Many were ultimately sovereign, but the Few were given special weight. The silence of the sources about the restoration of full democracy, and even about the regime of the Five Thousand itself, is much easier to understand, for the change back to the traditional constitution would be a far less important step, which might be carried out in more than one stage. The change or changes were the result of votes in the assembly, removing the oligarchic restrictions on the power of the demos: as the masses recovered their confidence, and Athens' naval predominance in the Aegean and the Hellespont was made secure for the time being by the victories of Cynossema, Abydos and Cyzicus, the common people would resent exclusion from office and eventually vote away the restrictions imposed after the fall of the Four Hundred.⁶² The absence from the Pro Polystrato of any attempt to discredit the earlier verdict against the accused presents no problem, for the judicial system under the Five Thousand will have been substantially the democratic one, except for the absence of pay.⁶³ And the curious phrase in § 17 of the Pro Polystrato, which Wilamowitz⁶⁴ found so ambiguous, *νῦν δὲ ἡνίκα αὐτὸς ἐαυτῷ εὐνούστατος ἐστὶν ὁ δῆμος*, at last receives an entirely satisfactory explanation: the demos is its own best friend because it has recently done away with the oligarchic restrictions on its power which were imposed in the autumn of 411.

⁶¹ Undoubtedly the extremists intended to deprive the masses of the franchise (see, however, the passage cited in n. 14 above, with the comment on p. 3) but the resolution voted at Colonus was probably ambiguous.

⁶² Theramenes' departure from Athens, which must have taken place late in 411 or early in 410 (see Diod. XIII 47. 6f.; Xen., Hell. I i 12) perhaps suggests that he may have foreseen that the regime of the 5,000 was not likely to last much longer.

⁶³ At what date political pay was restored is a question we are not bound to settle here. There is no evidence for it until early 405 (Ar., Ran. 1463-6: dicastic pay), and we do not know through whom it was paid. In ATL III 364 it is assumed that it passed, as before, through the hands of the Colacretae; but there is no evidence as to whether or not they existed after 411.

⁶⁴ Op. cit. (in n. 48 on p. 11 above) 361 n. 13: "mit Absicht mehrdeutig gesagt."

III. ATH. POL. 30-31 AND CONTEMPORARY DECREES

We must now look at chapters 30 and 31 of the Ath. Pol., and the evidence of contemporary Athenian decrees. There is one decree which can certainly be dated to the period of the Five Thousand: that proposed by Andron for the trial of Archeptolemus, Onomacles and Antiphon, which must have been passed in the autumn of 411 or very soon after.⁶⁵ There is also a much mutilated decree proposed by one Hippomenes, honouring Pythophanes of Carystus;⁶⁶ this has been almost universally attributed to the regime of the Five Thousand, but reasons will be brought forward here for dating it to the period of the Four Hundred. IG i² 105, assigned by Wilhelm to the year 411/10, has now been shown by Meritt⁶⁷ to belong to 407/6. The decree of Demophantus,⁶⁸ interesting as it is, gives us no information about the regime of the Five Thousand, although of course it is relevant to any consideration of the date of the restoration of full democracy.

Ever since the theory was originally propounded by Ehrenberg⁶⁹ in 1922, an impressive number of scholars (among them Busolt, Beloch, Wilcken and Ferguson) have wished to see in the Ath. Pol., chapter 30 — or in some combination of chapters 30 and 31 — either the actual constitution of the Five Thousand, or some advance sketch of that constitution which gives us reliable information about it. This theory rests on the slenderest of evidence, and one of our tasks here will be to examine that evidence point by point and show how insufficient it is.⁷⁰ There is in fact no reason to believe that chapter 30 of the Ath. Pol. is the constitution of the Five Thousand, or a "blue print" of that constitution, or even that it affords any reliable evidence about it.

Chapter 31 of the Ath. Pol. need not be considered here. If it is of any historical value, it may reflect, if in a garbled form, the measures voted at

⁶⁵ Ps.-Plut., Vit. X Orat., Antiph. (Mor. 833d-4b) = IG i² pp. 297-8. Th. Lenschau, in Rh. Mus. XC (1941) 24-30, dates this decree (which he nevertheless attributes to the regime of the 5,000) in June/July 410, because (a) it shows a *tribal* prytany; (b) the documents in the Ath. Pol. show an aversion to the use of the lot; and (c) the prytanies must therefore have been arranged according to the official sequence of the tribes, in which Antiochis (the tribe of the epistates of Andron's decree) was the last. Not one of these statements has any validity. As for the aversion to the lot which L. attributes to the oligarchs, see Thuc. VIII 70. 1, as well as many references in Ath. Pol. 30. 2-5. L. also seeks to draw a parallel between this decree and IG i² 110 (he gives the number as 59) = SIG³ 108 = Tod 86, rewarding the assassins of Phrynichus, which is strangely late (about March 409); but there is no reason at all to connect the two decrees. Although some of his arguments are unsound, Ferguson, op. cit. (in n. 49 on p. 11 above) 349-66, has amply proved that this decree is to be dated to the period of the 5,000.

⁶⁶ IG i² p. 297 (Wilhelm's improved text of IG ii² 12).

⁶⁷ AFD 109-14.

⁶⁸ Andoc. I 96-8.

⁶⁹ V. Ehrenberg in Hermes LVII (1922) 612-20.

⁷⁰ See also Hignett, HAC 367-78; K. von Fritz and E. Kapp, op. cit. (in n. 45 on p. 10 above) 174-8 (nn. 92-9), 180-2 (n. 117).

Colonus.⁷¹ To follow Beloch⁷² in trying to combine chapters 30 and 31 only makes matters worse, as most recent writers have realised. We may therefore concentrate entirely upon chapter 30.

The first point to be established about the constitution of chapter 30 is that Aristotle puts it, as a constitution "for the future," in the period of the Four Hundred, not the Five Thousand, and gives not the slightest indication that it was adopted under the latter — a fact which has too often been ignored by those who have found it inconvenient. It is a significant fact, especially when we recall the high praise given in chapter 33 of the *Ath. Pol.* to the constitution of the Five Thousand, which is there described only in the most general terms. Moreover, chapter 30 is very badly drafted — a thorough mess — and is far from providing a complete constitution, even in outline: in particular, it has nothing to say on the all-important question of jurisdiction.

We can now examine the specific evidence which has been adduced for regarding *Ath. Pol.* 30 as the constitution of the Five Thousand. There are five separate items.

1. In one particular, certainly, chapter 30 is not inconsistent, as far as we know, with the situation after the fall of the Four Hundred: chapter 30 provides for twenty Hellenotamiae, and from at least 410/09 onwards there were in fact twenty, instead of ten, as previously.⁷³ There seems to be no evidence about the actual number in 411/10; but at least chapter 30 may reflect a real change from ten to twenty Hellenotamiae in the year 411/10, under the Four Hundred or the Five Thousand.

2. Similarly, the Colacretae, who are not mentioned in *Ath. Pol.* 30, never appear again in our records from 411 onwards⁷⁴ — although the authors of *The Athenian Tribute Lists* assume (in the absence of direct evidence either way) that they were reconstituted⁷⁵ on the restoration of full democracy in 410, if only to deal with dicastic pay. Whether the Colacretae were abolished when the Four Hundred took power, or on the fall of the Four Hundred, or later still, we cannot tell: the date of their disappearance is not known. But again chapter 30 of the *Ath. Pol.* may be reflecting a change in the Athenian constitution in 411, under the Four Hundred or the Five Thousand.

So far we have established only two very slight pieces of evidence in favour of the theory that chapter 30 of the *Ath. Pol.* is the constitution of the Five

⁷¹ Cf. Ehrenberg, *op. cit.* (in n. 69 above), esp. p. 617.

⁷² Gr. *Gesch.* II² ii 311–24, esp. 316–7. See the criticisms of Hignett, *HAC* 367–73. Cary, in *JHS* LXXII (1952) 57–61, argues unconvincingly that the constitutional provisions of chaps. 30 & 31 were brought into effect on the fall of the 400. Cf. Hignett, *HAC* 372f.

⁷³ See Meritt, *AFD* 98–103.

⁷⁴ See *ATL* III 359–64; Ferguson, *Treasurers of Athena.* 3–4.

⁷⁵ In *ATL* III 360f., Ferguson's view that *Ath. Pol.* 30 is substantially the constitution of the 5,000 seems to be taken for granted.

Thousand. And let us be quite clear about this: there is no more evidence of any kind whatever. Three other points have been raised by the proponents of the theory we are considering, but two of these are irrelevant and the third is in fact dead against the theory.

3. The prescript of the decree of Andron, mentioned above,⁷⁶ has been thought by some⁷⁷ to afford evidence that under the regime of the Five Thousand there was no general assembly. This decree, as it has been transmitted to us in the *Life of Antiphon*, begins, ἔδοξε τῇ βουλῇ, μιᾷ καὶ εἰκοστῇ τῆς πρυτανείας· Δημόνικος Ἀλωπεκῆθεν ἐγραμμάτευε, Φιλόστρατος Παλληνεὺς ἐπεστάτει, Ἀνδρων εἶπε. The decree as a whole gives every appearance of having been copied with reasonable accuracy, although the prescript appears to have suffered in transmission.⁷⁸ The dating formula, "on the twenty-first day of the prytany,"⁷⁹ is not likely to be an interpolation, however, and it does show that some sort of prytany-system existed; but it cannot have been the standard democratic one, since the chairman and secretary both belong to the same tribe, Antiochis, and this would be impossible under the Cleisthenic system of tribal prytanies.

It is true that in the form in which it has come down to us the decree of Andron is of the council and not of the assembly. And the fifth century democracy does not appear to have begun the practice, familiar enough in the fourth century, of inscribing decrees of the council on stone; at any rate, none have survived. But merely because Andron's decree was passed by the council and inscribed on stone, we need not jump to the conclusion that no assembly existed at the time. All the decree does is to order Antiphon and his associates to be handed over to the appropriate dicastery for trial on a charge of treason (προδοσία), and make certain consequential provisions. Now the procedure used in prosecuting Antiphon and his associates was that of εἰσαγγελία, and one of the

⁷⁶ P. 14 & n. 65.

⁷⁷ See esp. Ferguson, *op. cit.* (in n. 49 on p. 11 above); contrast Hignett, HAC 375-8.

⁷⁸ The *Lives of the Ten Orators* do not contain the text of any other such document; but appended to the *Lives* (whether by their author or not, we cannot tell) are three documents called ψηφίσματα, in fact petitions, of which the third (851 f-2e) includes the text of a decree of Stratocles, parts of which also survive on stone (IG ii² 457 = SIG³ 326: see the Budé edition of Lycurgus, by F. Durrbach, pp. 7-8, with vii-viii). There are considerable differences in the wording. This should put us on our guard against placing too much reliance on the exact wording of Andron's decree, as it appears in the *Life of Antiphon* — although it is true that the decree of Andron, unlike that of Stratocles, appears in the body of the *Lives*, and may rest on better authority.

⁷⁹ The identification of the prytany, by name or number, may simply have dropped out. Dating by the day of the prytany is common in Athenian financial records of the Peloponnesian War period (see, e.g., Tod 55, 64, 75, 83, 92), although it does not occur in ordinary decrees. In the one account we have for the period of the 400 (Tod 81 = SEG X 231 = IG i² 298) the one recorded payment is dated by the day of the civil month, not by a prytany. By at any rate the year 407/6 the accounts of Athena's Treasurers (see Tod 92) begin to date by the day of the civil month as well as by the day of the prytany.

recognised alternatives in this procedure was a denunciation in the first place (already carried out in this case by the strategoi) before the council, which, if it found the complaint proved on investigation, had then to decide by *διαχειροτονία* whether it would inflict a summary fine up to its maximum limit of (in the mid-fourth century at any rate) 500 drachmae, or, if the case were too serious for that, send the accused before a dicastic court.⁷⁹ There is no reason to be surprised, therefore, at the absence of any reference to the *δῆμος* in Andron's decree: the judgment of the dicastery, representing the *Heliæa* as a whole, was equivalent to a decision of the *δῆμος*.⁸⁰ That judgment, however, did not give the details of the treachery of which Antiphon and Archeptolemus had been found guilty; hence the decree of the council, giving those details, was inscribed on the same stone. And we might add that even if the council did in this case take a more prominent and active role than had been usual under the democracy (and of this, as we have seen, there is no evidence), it would be very tempting to suppose that it did so because it had been made *αὐτοκράτωρ* for investigatory purposes, exactly as it had been in 415, at the time of the mutilation of the *Hermæ* and the profanation of the *Mysteries*.⁸¹ Such a grant of special powers would be even easier to understand in the autumn of 411, while the *nomothetai*⁸² were still at work producing the new constitutional measures.

4. The fourth piece of evidence which has been used to support the view that *Ath. Pol.* 30 is the constitution of the Five Thousand is drawn from the decree of *Hippomenes* in favour of *Pythophanes* of *Carystus*, referred to earlier.⁸³ The beginning of this decree is lost. After two lines of which only a few letters are preserved, we have the following: —

[. . . . κρ]άτης Ἰκ[αριεύς ἐγραμμάτευεν]
 [βολῆ]ς ἐπεστάτε
 5 [. . .] καὶ μετ' αὐτῷ π[ρῶδρουον?]
 [. Εὐ]πεταιῶν, Δίων
 [. .] Κεφαλῆθεν, Καλ
 [. . Ἰ]ππομένης εἶπε·

⁷⁹ The clearest description of this procedure is in *Ps.-Dem.* XLVII 41-3 (350's B.C.). We have very little information about the course of ordinary *eisangeliai* in the 5th century, but fortunately *Antiph.* VI 12, 35, 49, with 37, shows substantially the same procedure existing in 419 B.C.: in that year the speaker had lodged an *eisangelia* against four men with the council (§§ 12, 35, 49), which had sent the case for trial before a dicastery (§ 37). For the date 419/8 for this speech, see *Meritt, The Athenian Calendar* 121-2, accepted by *Dover* in *CQ* XLIV (1950) 44.

⁸⁰ *Ferguson*, *op. cit.* (in n. 49 on p. 11 above) 349-50, was wrong in thinking that the assembly as such might be expected to take part.

⁸¹ See *Andoc.* I 15.

⁸² *Thuc.* VIII 97. 2.

⁸³ *P.* 14 & n. 66 above.

Here Wilhelm,⁸⁴ followed by Ferguson⁸⁵ and most recent writers, believes we can detect the functioning of the system described in Ath. Pol. 30. 4-5, whereby five councillors, who may well have been called *πρόεδροι*, although they are not actually so named in the Ath. Pol., were to count the votes on divisions in the council and supply one of their number, chosen by lot, to be chairman. But the connection with the Ath. Pol. is by a very slender thread. And there is a fundamental objection to using this decree as evidence for the constitution of the Five Thousand: it is much more likely that it belongs to the government of the Four Hundred. It is astonishing that so many scholars should have been content to accept both this decree and Andron's for the Five Thousand. The prescripts show significant differences: that of Andron's decree dates by the day of the prytany (evidently non-Cleisthenic, as we have seen), but is otherwise perfectly normal, whereas the decree of Hippomenes has a prescript quite unlike the standard Athenian one, in that it describes a system of chairmanship otherwise unknown among Athenian decrees of the fifth century, makes no apparent reference to a prytany, and may not even begin, like Andron's decree, with *ἔδοξε τῇ βουλῇ*.^{85a} And there is a very obvious piece of evidence against dating Hippomenes' decree to the period of the Five Thousand, which seems to have been overlooked: lines 10-12 declare that Pythophanes [*εὖ ποιεῖ ὁ τι δύνανται τὴν πόλιν τὴν Ἀθ[ηναίων καὶ τὴν Καρυ]στίων*], a statement which could hardly have been made under the regime of the Five Thousand, during the whole of which Carystus, with the rest of Euboea except Oreus, was in revolt.⁸⁶ We must therefore date Hippomenes' decree to the period of the Four Hundred. The only argument against this attribution which has ever had even a superficial plausibility is Eduard Meyer's,⁸⁷ that the democracy, in 399/8, would not have reinscribed a decree of the Four Hundred; but there is no real force in this. In the first place, the main provision of Hippomenes' decree is that an earlier decree (which must have been passed under the democracy) in favour of Pythophanes, declaring him *πρόξενος καὶ εὐεργέτης*, is to be inscribed on stone and set up at

⁸⁴ In Jahresh. d. österr. arch. Inst. in Wien XXI-II (1922-24) 147-52. U. Kahrstedt, in Klio XXXIII (1940-41) 12, would prefer to read *π[ρυτάνες -]* or *π[ρυτάνες ἔσαν -]*. This would not make the connection with Ath. Pol. 30. 4 more or less probable.

⁸⁵ In CP XXI (1926) 72-5; cf. Mél. Glotz I 349-66, esp. 350, where this decree is said to be "assigned definitely to the period of the 5,000."

^{85a} It is possible that the decree of Hippomenes begins earlier than in line 3 of our inscription; and if so it may contain the *ἔδοξε* clause (the absence of which would be very strange) and even some reference to a prytany. Mr. D. M. Lewis has suggested that this decree can, if necessary, be brought into closer conformity with Andron's decree by restoring the first two partly preserved lines [- 8 -] HN [- 14 - *ἔδοξεν | τῇ βουλῇ, ἣν τε[τάρτη τῆς πρυτανείας?]*. He admits, however, that there are no exact parallels for this type of dating formula.

⁸⁶ Thuc. VIII 95. 7.

⁸⁷ Forsch. zur alten Gesch. II 430 n. 2. Meyer's other argument for putting the decree after the fall of the 400 is that it is a "Volksbeschluss." As no other restoration than [*βουλῇ*] *ἔπεσάτε* seems likely, the decree must be of the council, not the assembly.

Athens; it adds that no one is to injure Pythophanes, gives him ἀσουλία (if the restoration is right, as it must be), and instructs the strategoi and the council to see that its provisions are carried out. The terms of the decree show that Pythophanes was a practising merchant,⁸⁸ who must therefore have made himself useful to Athens by importing corn or timber or some other essential commodity. Why should anyone in 399/8 object to the reinscribing of such a harmless decree, even if it was passed during the regime of the Four Hundred? And in fact we must not take it for granted that the decree of Hippomenes was reinscribed in 399/8. Mr. D. M. Lewis has recently noticed that the last three lines of the inscription, containing the opening words of the decree of 399/8, appear to be in a different hand.⁸⁹ If this is right, there is no need to suppose that the decree of Hippomenes which we have was not carved on the stone at the time it was passed, and the subsequent decree added thirteen years later. As for the five π[ροεδρεύοντες] — if that is what they are — of the prescript of Hippomenes' decree, we may note that five πρόεδροι are explicitly attested by Thucydides⁹⁰ for the regime of the *Four Hundred* at its inception. Their only known function is elective, but their name shows that they must also have acted as chairmen.⁹¹ From all this it is clear that we must certainly not use the decree of Hippomenes as evidence for the constitution of the Five Thousand.

5. Finally, Ath. Pol. 30 provides for a combined board of Treasurers of Athena and the Other Gods. Now this board did not come into existence, as Ferguson⁹² was obliged to admit, until the year 406. In at least one respect, then, the constitution in Ath. Pol. 30 does not correspond with the historical situation in 411/10, and the document as we have it cannot be the actual constitution of the Five Thousand.

This is a more serious blow to the supporters of the theory we are considering than it may appear at first sight. It is not just a question of one particular error: the source of Aristotle's information now becomes a vital issue. If it contained an error such as we have just noticed, then the source was not accurately

⁸⁸ Lines 18–21. Hence Lenschau's attempt to connect Pythophanes with the Carystians of Thuc. VIII 69. 3 is fanciful — and if there were anything in this, Meyer's argument would operate against L. with some force.

⁸⁹ See the photograph in J. Kirchner, *Imagines Inscr. Attic.* (2nd edn. by G. Klaffenbach), Plate 20, no. 44.

⁹⁰ VIII 67. 3.

⁹¹ De Sanctis, *op. cit.* (in n. 2 on p. 1 above) 104–5, thinks Thuc. confused these proedroi with those of Ath. Pol. 30. 4. He too seems to attribute Hippomenes' decree to the 400, but only because he thinks the constitution of Ath. Pol. 30 never came into operation and yet wants to find proof that it was *voted*. He thinks the 5 proedroi of Ath. Pol. 30. 4 may be a reflection of the actual constitution of the 400.

⁹² Treasurers of Athena 4–7, 104–9. (Note p. 107: "The proposal to amalgamate was rejected by the nomothetae"). See the comments of Hignett, *HAC* 377. It will hardly be suggested (even though there is no positive evidence to the contrary) that the two boards were amalgamated in the autumn of 411 and separated again (see Tod 83) in 410.

reproducing the decree or decrees setting up the constitution of the Five Thousand, and (as many of us would conclude in any event from the desperate obscurity of many of the provisions of the chapter) was very probably not utilising the actual decrees at all or a correct summary of them. But once it is admitted that chapter 30 is not reproducing or summarising the actual constitution of the Five Thousand, but is no more than an "advance plan," or something of that sort, we must lose all confidence in it, for we cannot tell how many other features of the "advance plan" may ultimately have been rejected or modified.⁹³

How the constitutions in chapters 30 and 31 of the Ath. Pol. originated, and descended to Aristotle, we have no means of determining, nor is the question material to our present enquiry, now that we have established the irrelevance of these paper constitutions to the actual constitution of the Five Thousand.

IV. THUCYDIDES

Upon our determination of the character of the constitution of the Five Thousand depends to some extent^{93a} our estimate of the political position of Thucydides, who gives that constitution special praise.⁹⁴ Now the difference between the accepted view and that proposed here is greater than may at first appear. In a hoplite oligarchy such as the accepted view conceives the rule of the Five Thousand to have been, the Thetes could regain the franchise only by the will of the upper classes or by violent revolution. According to the view presented here, the whole body of citizens retained ultimate sovereignty, and

⁹³ The most popular theory of recent times is that chap. 30 shows the whole of the politeuma forming a large council divided into four panels, with no separate assembly. But this is very far from clear, as many scholars have realised: see, e.g., the criticisms of G. H. Stevenson in JHS LVI (1936) 55-6.

^{93a} "To some extent" only — because although the passage in question (VIII 97. 2) is in this connection the most important single passage in Thuc., there are many others, notably the Funeral Speech and the judgments in II 65, which must also be taken into account.

⁹⁴ καὶ οὐχ ἥκιστα δὴ τὸν πρῶτον χρόνον ἐπὶ γε ἐμοῦ Ἀθηναῖοι φαίνονται εὖ πολιτεύσαντες· μετρία γὰρ ἦ τε ἐς τοὺς ὀλίγους καὶ τοὺς πολλοὺς ξύγκρασις ἐγένετο καὶ ἐκ πονήρων τῶν πραγμάτων γενομένων τοῦτο πρῶτον ἀνένεγκε τὴν πόλιν (VIII 97. 2). The exact interpretation of the words τὸν πρῶτον χρόνον here has long been disputed. Is Thuc. saying (a) that the constitution established on the fall of the 400 was *during its earliest phase* the best of his time, or (b) that under that constitution Athens was *for the first time in his life* thoroughly well governed? Each translation has very reputable advocates (see, e.g., Classen-Steup³ ad loc. and Appendix to vol. viii, pp. 298-9), and it is difficult to decide between them. The word order is in favour of (b); but, as Steup says, if (b) is right one would expect at least a τότε. Version (a) is hard to reconcile with the accepted view of the constitution of the 5,000, which lasted less than a year in all. It goes much better with the alternative view put forward here: the πρῶτος χρόνος would be the time during which the mixed constitution lasted. Version (b) is compatible with either view.

they could at any time — and eventually did — vote away the privileges they had for a time reserved for the upper classes. When feeling in the assembly reached a certain pitch, the councillors, even if most of them were reluctant to surrender their privileges, could hardly refuse to place on the agenda of the assembly some such item as χρηματίζειν περὶ τῆς πολιτείας. Thucydides, then, was giving his approval to what was substantially a democracy. On the accepted view of the constitution of the Five Thousand, it would not be right to call him anything but a moderate oligarch: if he could really approve of the complete disfranchisement of something like half the citizen population, it would be impossible to call him even a moderate democrat.⁹⁵ It is true that Thucydides was much less interested in the form than in the practical working of constitutions: he evidently approved of the Periclean regime, but disapproved of that which immediately followed it,⁹⁶ although in constitutional form there was no difference whatever between the two. By themselves, the words Ἀθηναῖοι φαίνονται εὖ πολιτεύσαντες in VIII 97. 2 might refer to the structure of the constitution (“enjoyed a good form of constitution”) or to its practical working (“were well governed”), or to both these aspects. The words which follow show that both meanings are present, for we have a reference to the form of the constitution (μετρία ξύγκρασις) and to the way it worked in practice (ἀνένεγκε τὴν πόλιν). Here for once Thucydides has declared himself plainly, in favour of what we can only call a moderate or modified democracy, a democracy which accepted certain oligarchic elements as a temporary measure but retained the power to abolish those elements and did before long abolish them, without resort to violence.

V. CONCLUSION

The results achieved here have been mainly negative. However, by demonstrating that there is no real evidence at all in its favour we have at least demolished the accepted theory that the constitution of the Five Thousand *must have* denied the franchise to the Thetes. We have also shown that chapter 30 of the Ath. Pol. cannot be that constitution, and we have seen reason to doubt whether it has any relevance to it. Unfortunately, we cannot prove beyond reasonable doubt that the accepted view of the constitution of the Five Thousand is wrong; but we have seen that it is very much more probable that under that constitution — as under Solon's — all citizens had the basic political rights of sitting in the assembly and the courts, while the council and no doubt all other ἀρχαί became the exclusive preserve of the ὅπλα παρεχόμενοι, who consequently could be said to have control of affairs. While it lasted, that control

⁹⁵ Cf. Busolt, Gr. Staatsk. I 572: “Gemäßigte Oligarchien beschränkten auf die ὅπλα παρεχόμενοι die politische Berechtigung, gemäßigte Demokratien die Fähigkeit zur Ämterbekleidung.”

⁹⁶ See esp. Thuc. II 65. 5–12.

may have been almost complete, but it was always a precarious control, because it rested on a voluntary concession of power by the whole demos to the upper classes, the demos retaining, and after some months exercising, the right of revocation.

There is very little more that we can say positively about the constitution of the Five Thousand, except of course that it made no provision for political pay. The reference in the prescript of the decree of Demophantus⁹⁷ to ἡ βουλὴ οἱ πεντακόσιοι (οἱ) λαχόντες τῷ κύμαφ can be interpreted in either of two ways: one can infer that the council of the Five Thousand did not number five hundred and was not elected by lot, or that it did number five hundred but was not elected by lot.⁹⁸ In view of Alcibiades' demand to the emissaries of the Four Hundred, recorded by Thucydides,⁹⁹ the latter is perhaps slightly the more probable. It may well be that certain matters which under the old democracy had been brought to the assembly were in the time of the Five Thousand dealt with by the council. This would help to account for the constant reiteration of such expressions as ἄνευ τοῦ δέμο τοῦ Ἀθηναίου πλεθύνοντος in IG i² 114,¹⁰⁰ which we must presumably date in 410 or very soon after. However, until some new evidence turns up, the details of the constitution of the Five Thousand must remain obscure.

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APPENDIX

(See n. 45 on p. 10 above)

There are two separate lines of argument in favour of taking τούτους in Ath. Pol. 34. 1 (init.) to be the 400. First, Aristotle employs the μὲν οὖν construction some 50 times in the Ath. Pol., sometimes (i.e. in 2. 3; 3. 3; 9. 2; 16. 6; 19. 5; 21. 2; 22. 2; 23. 4; 26. 2; 43. 3; 47. 5; 48. 2; 54. 3; 57. 1) to explain, illustrate, comment on or amplify something that has been said before, but far more often to prepare a transition from a subject or episode already mentioned to a fresh one, the μὲν οὖν clause occasionally (i.e. in 17. 1; 22. 6; 23. 1; 28. 1; 29. 1; 33. 1; 35. 2) adding some new information to its restatement of what has gone before, but far more often merely recapitulating. This construction is used again and again at the beginning of our chapters to refer back to what has been said in the previous chapter or so: this can be seen, e.g., in chaps. 4, 9, 10, 13, 15, 16, 17, 21, 25, 26, 28, 30, 31, 32, 35, 41, 43, 50, 55, 60. (Cf. Denniston, *Greek Particles*² 472: "Often the μὲν [οὖν] clause sums up and rounds off the old topic, while the δέ clause introduces the new one. . . . Very common in Arist."). In 34. 1, however, according to the usual interpretation, the μὲν οὖν clause does something quite different: it introduces *an entirely new episode, without returning at all to what has gone before* — and only one parallel can be found for this (in

⁹⁷ Andoc. I 96–8.

⁹⁸ The possibility that both councils were elected by lot but that the council of the 5,000 did not number 500 can of course be neglected.

⁹⁹ VIII 86. 6.

¹⁰⁰ See H. T. Wade-Gery in BSA XXXIII (1932–33) 113–22, with text.

28. 3), among the many occurrences of this construction in the Ath. Pol. It is thus arguable that the linguistic usage of the Ath. Pol. is in favour of our taking τούτους in 34. 1 to mean the 400, even though the last sentence — but only, be it noted, the last sentence — of chap. 33 describes the constitution of the 5,000. Secondly, the text continues ἔτι δ' ἐβδόμῳ μετὰ τὴν τῶν τετρακοσίων κατάλυσιν κτλ. Whether one emends ἐβδόμῳ to ἑκτῷ, or (with Kaibel & Wilamowitz) κατάλυσιν to κατάστασιν, Arist. is dating his next episode (Arginusae) by the rule of the 400. Why does he jump backwards in this way, if in the first sentence of 34 he has made a reference to the fall of the 5,000? Why does he not date from that event, the natural one from which to reckon forwards? If τούτους are the 400, of course, his procedure is perfectly natural. (In view of διὰ τᾶχους, those who would prefer to take τούτους as the 5,000 cannot maintain that Arist. did not know whether the regime of the 5,000 lasted beyond the archon-year 411/10 and so was *obliged* to date his next event from the fall of the 400). Nevertheless, there is a strong presumption that τούτους at the beginning of 34 will refer to the people last mentioned in the preceding chapter, i.e. the 5,000; and as the arguments to the contrary are hardly conclusive, it is best to leave the question open.

LA PRISE DE ROME PAR LES CELTES ET LA FORMATION DE L'ANNALISTIQUE ROMAINE

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I. LES SOURCES ET L'ÉTAT ACTUEL DE LA QUESTION

L'histoire de la prise de Rome par les Celtes tient, on le sait, depuis Beaufort, une place de premier ordre dans les études consacrées à élucider le problème des deux premiers siècles de la république romaine. Cependant, malgré les efforts considérables liés aux noms célèbres de Niebuhr, Lewis, Schwegler, Mommsen, Pais, de Sanctis, Homo et d'autres, nous sommes bien loin d'atteindre des résultats unanimement acceptés, et c'est pourquoi elle ne cesse de hanter les esprits avides de résoudre l'énigme de cet événement qui comme aucun autre a influencé le cours du développement de Rome¹. La cause en est, comme partout dans l'histoire comprise entre 500-300 av. n. è., l'état de notre tradition qui bien qu'abondante présente des différences, des contradictions, des traits jugés légendaires, des falsifications évidentes, en un mot un noeud difficile à débrouiller². Pour mettre en relief l'essentiel du problème, il faut constater que l'on est aujourd'hui assez loin d'être d'accord sur la provenance des relations contenues dans les sources et, chose plus importante, sur leur valeur. Ce point reste surtout obscur et a entraîné une discussion interminable³.

Cependant, ces derniers temps ont apporté un progrès sensible dans le domaine de la critique des sources, ce qui nous met en état d'aborder le problème sous un jour nouveau. Il s'agit ici des travaux de Siegfried⁴, ensuite de ceux de Burck⁵, de Stübler enfin⁶. Ces études, bien qu'elles aient contribué puissamment à dégager les conceptions directrices de Polybe et de Tite-Live, nos principales sources pour la prise de Rome par les Celtes, peuvent servir, vu leur caractère général, à nous orienter dans l'analyse des sources plutôt qu'à résoudre le problème lui-même.

¹ A la littérature donnée par L. Homo, C.A.H. VII 1928, il faut joindre de nouvelles positions prises depuis et citées au cours de notre travail.

² Voir l'oeuvre magistrale de Th. Mommsen, *Römische Forschungen I-II*, Berlin 1864-1879, qui, comme personne avant et après lui, a contribué à mettre en relief les difficultés liées à ce problème et a su indiquer la voie conduisant à sa solution.

³ Cf. la dernière mise au point de A. Klotz, *Livius u. seine Vorgänger*, 3. Heft. Leipzig-Berlin 1941, *Neue Wege zur Antike* 11.

⁴ W. Siegfried, *Studien zur geschichtlichen Anschauung des Polybios*. Leipzig 1928.

⁵ E. Burck, *Die Erzählungskunst d. T. Livius. Problemata* 11. Berlin 1934; *Livius als augusteischer Historiker. Die Welt als Geschichte* 1. Stuttgart 1935, 446 ss.

⁶ G. Stübler, *Die Religiosität des Livius*. Tübinger Beiträge zur Altertumskunde Heft 35. Stuttgart-Berlin 1941.

Le résultat des recherches sur les sources de Diodore dans la partie relative à l'histoire romaine nous semble être infiniment plus important. On sait que depuis Mommsen¹, dont l'autorité incontestable a su imposer le silence aux récalcitrants, a prévalu l'opinion d'après laquelle Diodore a puisé ses informations dans l'oeuvre de Fabius Pictor, le plus ancien des historiens romains. Cette thèse, qui eut longtemps ses adhérents², fut vivement combattue du vivant de Mommsen par Niese³. Dès lors les attaques se sont multipliées⁴ et maintenant on juge, à la lumière d'arguments suffisamment convaincants, que la source de la tradition romaine de Diodore doit être cherchée parmi les annalistes de l'époque de Sylla⁵. Ce rabaissement de la valeur de l'auteur, censé jusqu'ici représenter la plus vieille couche de la tradition relative à l'histoire de l'invasion celtique, est de nature à modifier sensiblement nos vues sur tout le problème et nous place devant une tâche complètement changée.

On a, comme on sait, traité jusqu'ici Diodore, vu la sobriété du récit de Polybe, comme source principale, surtout en ce qui concerne le problème de la bataille de l'Allia; quant à Tite-Live on l'a rangé dans le même groupe que Denys d'Halicarnasse, Plutarque et d'autres sources postérieures⁶. Et cependant, nous nous trouvons vis-à-vis non de trois sources distinctes, à savoir de Polybe, de Diodore et de Tite-Live avec le reste de la tradition, mais en réalité devant Polybe au premier plan, séparé par un vide du reste de la tradition composée des auteurs cités plus-haut. Il s'en suit qu'entre Diodore et Tite-Live il n'y a qu'une différence quantitative et non qualitative, tous les deux étant représentants de la tradition annalistique du I^{er} siècle⁷.

¹ Fabius u. Diodor, *Hermes* 5 (1871) 271 ss. 13 (1878) 305 ss. — *Röm. Forsch.* II 221 ss. Il est à noter que déjà Niebuhr a cru trouver chez Diodore „eine älteste Tradition“.

² Cf. Ed. Schwartz, *Diodoros*, *R. E.* V 697; O. Leuze, *Die röm. Jahrzahlung*. Tübingen 1909, 69 s; Burck, *Livius als aug. Historiker*, 449 s; Fr. Cornelius, *Untersuchungen zur frühen röm. Geschichte*. München 1940, 34.

³ *Die Chronologie der gallischen Kriege bei Polybios*. *Hermes* 13 (1878) 401 ss.

⁴ Cf. O. Hirschfeld, *Zur Überlieferung des ersten Gallierkrieges*. *Kl. Schriften*, Berlin 1913, 268; K. J. Beloch, *Römische Geschichte*. Berlin 1926, 126 ss.

⁵ Après Beloch c'est surtout Klotz, *Diodors Annalen*. *Rh. Museum N. F.* 86 (1937) 206 ss, qui après une analyse profonde et détaillée a prouvé que l'ancienne hypothèse n'a pas de fondement et qu'il faut chercher la source de l'histoire romaine de Diodore chez les annalistes de l'époque tardive, peut-être même du I^{er} siècle av. n. è. A cette opinion se sont ralliés Fr. Altheim, *Italien u. Rom II*. Amsterdam-Leipzig s. d. 483, rem. 888; M. Gelzer, *Gnomon* 18 (1942) 229; Fr. Bömer, *Naevius u. Fabius Pictor*. *Symbolae Osloenses fasc.* 29 (1952) 51. Cependant, selon Altheim, *Rh. Museum* 93 (1950) 271, Diodore a puisé ses informations chez Sempronius Asellio, auteur du II^{ème} siècle.

⁶ Voir G. Thouret, *Über den gallischen Brand*. *Jahrb. f. class. Philologie*, Suppl. 11 (1880) 104 ss., qui dans son important article a résumé avec une grande minutie toutes les sources relatives à la question de la prise de Rome.

⁷ Mais d'après l'opinion de Klotz, *Rh. Museum* 86, 224, nous nous trouvons quant à Diodore vis-à-vis d'une tradition relativement pure, moins viciée que celle que nous donne la relation de Tite-Live. D'autre part, cependant, Altheim, *Epochen d. röm. Geschichte*.

Il est bien clair que toute étude consacrée à la question de la prise de Rome par les Celtes doit tenir compte de cette nouvelle situation qui modifie notre façon d'envisager le problème sous son aspect fondamental, à savoir celui de la valeur des sources. Bien entendu, cette thèse, pour ne pas encourir le reproche d'être comme énoncée à priori, doit être corroborée par des études particulières qui se donneraient pour objet la tâche de confronter les sources relatives à une question spéciale comme celle de la prise de Rome par les Celtes. Ce n'est qu'à la lumière de semblables investigations que l'on pourra considérer cette thèse comme suffisamment vérifiée. Il nous semble donc opportun de reprendre le problème de l'invasion celtique, sujet qui n'a pas fait depuis longtemps l'objet d'une monographie.

Mais avant d'aborder le problème et de procéder à l'analyse des sources, il faut passer en une revue rapide tout ce que nous savons de la formation de la plus ancienne tradition romaine, de sa valeur intrinsèque, en se bornant à l'inclure dans les cadres des recherches que des sources ayant trait à l'histoire de la prise de Rome par les Celtes. On est aujourd'hui assez communément d'accord pour affirmer que l'usage d'inscrire sur les „*tabulae pontificum*“ les événements les plus importants de la vie profane de l'Etat romain doit dater environ de l'an 300 av. n. è. ou un peu plus tôt¹, ce qui, bien entendu, n'exclut pas l'existence de documents, d'inscriptions qui remonteraient au-delà de cette date². Et en vérité ce n'est qu'à partir de ce moment que l'histoire romaine présente un aspect assez satisfaisant, notamment grâce au concours des auteurs grecs contemporains. Mais que devons nous penser de la tradition des deux premiers siècles de la république? La réponse est très difficile, elle reste, et, peut-être, restera pour toujours incertaine et soumise à des interprétations différentes³. Mais il est à considérer que dans les sources postérieures, chez Diodore, Denys, Tite-Live, Plutarque et d'autres, nous trouvons des récits

Frankfurt 1934, 165 ss., voit chez Tite-Live dans son récit de l'invasion celtique des éléments puisés dans une source sacerdotale, ce qui l'induit à la juger préférable aux données de Diodore. Voir aussi à ce propos les remarques d'Ed. Meyer, *Zur alt. röm. Geschichte*. Kl. Schriften II. Halle 1924, 286 ss.

¹ Il est peu probable que cette opinion puisse être modifiée sensiblement. Cf. M. Gelzer, *Der Anfang d. röm. Geschichtsschreibung*. *Hermes* 69 (1934) 46 ss. D'autre part il est à noter que l'avenir cache des surprises comme l'atteste la trouvaille des „*fasti praecapitolini*“ d'Urbisaglia. Cf. Bömer, l.c. 51, J. Vogt, *Gnomon* 12 (1936) 524.

² La question est des plus discutées. Voir en dernière instance les remarques judicieuses de Gelzer, *Gnomon* 18 (1942) 220 ss., qui a résumé les différents points de vue relatifs à ce problème.

³ Peut-être une analyse pénétrante de l'histoire économique de l'Italie et surtout de la religion romaine – cf. Altheim, *Röm. Religionsgeschichte I-II*, Baden-Baden 1951-3 – nous conduira un peu plus loin. Que ce domaine ne soit pas jusqu'ici dûment épuisé, c'est ce que semble indiquer pour l'époque postérieure – la deuxième guerre punique – l'important travail de Ilse Seidl, Q. Fabius Maximus Cunctator und die Konsulwahlen, *Rh. Museum N. F.* 96 (1953) 241 ss.

concernant l'histoire du Vème et du IVème siècles d'une ampleur et d'une richesse de détails qui semble être en contradiction avec tout ce que nous savons de l'état initial de la documentation romaine.

Depuis Niebuhr on a essayé à maintes reprises d'expliquer à l'aide d'hypothèses ingénieuses dans quelles sources les annalistes de l'époque postérieure avaient puisé leurs informations pour sauver ainsi quelque chose de l'histoire des deux premiers siècles de la république sans y réussir entièrement¹. Ce n'est certainement pas notre tâche de traiter à fond toutes ces hypothèses qui n'ont aujourd'hui pour la plupart qu'une valeur historique. Mais d'autre part il ne nous semble pas possible d'aborder notre problème sans nous exprimer nettement à ce sujet. L'incertitude qu'on observe partout dans ce domaine nous induit à envisager du point de vue de la méthode comme fondamentale la phrase de Denys d'Halicarnasse I 6,2 d'après laquelle Fabius Pictor οἷς μὲν αὐτὸς ἔργοις παρεγένετο, διὰ τὴν ἐμπειρίαν ἀκριβῶς ἀνέγραψε, τὰ δὲ ἀρχαῖα τὰ μετὰ τὴν κτίσιν τῆς πόλεως γεγόμενα κεφαλαιωδῶς ἐπέδραμεν. Cette constatation est communément admise par la critique² et suffisamment attestée par l'état des fragments qui manquent pour presque deux siècles (484-324 av. n. è.)³, ce qui, à nos yeux, ne peut être chose fortuite; d'autre part ils sont abondamment conservés pour l'époque royale. Mais on n'est pas surpris de trouver la même situation chez Caton. Evidemment, comme il ressort des informations de Denys citées plus-haut, on ne savait pas grand'chose des deux premiers siècles à la fin de la république. Cet état d'ignorance se trouve contredit par le fait, bien connu naturellement, que depuis le temps des Gracques les récits succincts de Fabius Pictor ou bien de Caton ont subi un gonflement entre les mains d'annalistes comme Gellius, Claudius Quadrigarius et Valérius Antias, qui, peu estimés, nous inspirent de la méfiance. Car s'ils n'ont pas découvert de nouvelles sources, d'où ont-ils tiré cet amas de détails, du reste fort intéressants? La critique historique n'a pas donné de réponse satisfaisante à cette question.

On a souligné récemment la fonction de la tradition orale chez les Romains⁴. Cette théorie, puissamment développée sous l'influence des études comparatives menées dans le domaine de la littérature des Géorgiens, des Serbes et d'autres peuples, a été adaptée avec un résultat appréciable dans les recherches sur l'histoire grecque. Cependant, il ne nous semble pas prudent, vu la différence du caractère des Grecs et des Romains, d'appliquer le même procédé à ces deux nations. Bien entendu, le silence des sources mis à part, on doit supposer aussi à priori l'existence de quelque tradition orale chez les Romains. Mais évidem-

¹ Après l'oeuvre toujours utile de A. Rosenberg, *Einleit. u. Quellenkunde zur röm. Geschichte*. Berlin 1921, tout ce problème a été de nouveau traité par H. Bengtson, *Einführung in die alte Geschichte*². München 1953. Voir aussi les articles de F. Klingner, *Livius, Die Antike* 1 (1925) 86 ss; Cato Censorius u. die Krisis des röm. Volkes, *Die Antike* 10 (1934) 239 ss; *Römische Geschichtsschreibung bis zum Werke d. Livius. Die Antike* 13 (1937) 1 ss. ² Cf. par ex. Beloch, *Röm. Geschichte* 98.

³ H. Peter, *Hist. Rom. Fragm. Lipsiae* 1883, 27.

⁴ Cf. Bengtson, *l.c.* 107.

ment ce que les oeuvres des annalistes romains depuis l'époque des Gracques et de Sylla enseignaient de la prise de Rome par les Celtes ne pouvait provenir entièrement de la tradition orale. On admettra avec Soltau¹ que cette tradition recueillie probablement par l'intermédiaire des pontifes a sauvé, à côté des faits religieux, quelques souvenirs militaires. Il est probable que dans les familles patriciennes ou plebéiennes se sont conservées des informations relatives aux combats intérieurs auxquels leurs membres ont pris part. Mais, en suivant toujours Soltau, nous devons nous demander combien de faits militaires présentés par les annalistes avec une foule de détails doivent leur existence à la tradition orale. De plus, si cela est peu probable en ce qui concerne les victoires des Romains, que devons-nous penser des souvenirs d'une écrasante défaite infligée par les Celtes? Qui donc avait intérêt à sauvegarder la mémoire et à transmettre aux générations futures les détails de ce terrible événement²? Nous pensons évidemment à ce récit détaillé que nous trouvons chez Diodore, Tite-Live ou Plutarque, et non à la sobre et succincte relation de Polybe³.

Et maintenant si nous nous représentons qu'entre la prise de Rome et l'activité littéraire de Polybe se sont écoulés près de deux siècles et demi, il nous semble impossible d'admettre que pendant ce laps de temps cette tradition orale ait pu être transmise – on ne sait par qui – jusqu'au temps de Fabius. Du reste, comme nous le savons, celui-ci n'a pas beaucoup écrit sur les deux premiers siècles de la république et il faut compter un nouveau siècle pour faire parvenir cette tradition aux annalistes de l'époque des Gracques. Cette critique plutôt négative, qui s'appuie sur l'observation faite déjà par Nissen⁴, à savoir que la valeur d'une source annalistique est en raison inverse de son ampleur, et qui n'a rien perdu de son actualité, nous pose devant le problème des sources de la tradition des annalistes relative à la prise de Rome par les Celtes.

Il y a une vingtaine d'années on a essayé de trouver l'explication de ce phénomène, à supposer qu'il faille la chercher dans les légendes des Romains. C'est Nap⁵ qui a fixé la date de la formation des „légendes“ relatives à la prise

¹ W. Soltau, *Die Anfänge der röm. Geschichtsschreibung*. Leipzig 1909, 233.

² Mommsen, *Röm. Forsch.* II 298, rem. 3, a eu, semble-t-il, raison quand il soulignait que les poètes n'ont pas eu l'envie de traiter ce thème mal adapté à leurs buts patriotiques, peut-être à l'exception des auteurs des „*fabulae praetextae*“. Voir à ce sujet la dernière mise au point d'Agnes Kirsopp Michels, *The Drama of the Tarquins*. *Latomus* X 1 (1951) 13 ss.

³ On peut se mettre d'accord avec Cornelius, *Unters. z. früh. röm. Geschichte* 118, rem. 7, qui évalue le temps pendant lequel le souvenir d'un fait historique peut être retenu dans la mémoire à environ cent ans.

⁴ *Kritische Untersuchungen über die Quellen der 4. u. 5. Dekade d. Livius*. Berlin 1863, 101. Cf. M. Gelzer, *Die Unterdrückung der Bacchanalien bei Livius*. *Hermes* 71 (1936) 276.

⁵ *Die röm. Republik um das Jahr 225 v. Chr.* Berlin 1935. L'opinion de Nap semble être partagée par W. Hoffmann, *Livius u. der zweite punische Krieg*. *Hermes Einzelschrift*. Heft 8, Berlin 1942, 111.

de Rome aux années proches de l'an 225, comme si elles étaient conçues sous l'impression de la guerre imminente avec les Celtes. Mais son hypothèse ne nous paraît pas suffisamment fondée. L'auteur ne nous dit nulle part par qui ces légendes ont été créées et par quelle voie elles ont trouvé accès à l'annalistique postérieure à Fabius Pictor. L'in vraisemblance de la conception „légendaire“ mise à part, il nous semble plus qu'étrange que Fabius Pictor n'ait pas profité de cet amas de légendes pour y puiser des informations susceptibles de remplir le vide de l'histoire de l'époque initiale de la république, bien qu'il y ait fait largement appel à propos de l'histoire des rois. D'autre part, d'après l'opinion commune, Polybe a puisé sa tradition relative à l'invasion celtique chez Fabius Pictor et rien dans son court récit ne nous permet de supposer l'existence de ces légendes¹.

De cette brève revue des hypothèses qu'on a dernièrement faites à propos de la formation de la tradition relative à l'invasion de Rome par les Celtes découlent les constatations suivantes: d'abord que le point de départ de nos recherches doit être la relation de Polybe, laquelle s'appuie probablement sur l'oeuvre de Fabius Pictor, ensuite que le reste de la tradition, Diodore aussi bien que Tite-Live², suspects par l'ampleur et le contenu de leur narration, ne doit ses informations ni à la tradition orale ni à la tradition légendaire des Romains et qu'il est postérieur à l'activité des plus anciens écrivains romains, Ennius y compris³. Ayant posé ces deux prémisses à notre étude, nous nous trouvons maintenant en état de poursuivre nos recherches. Au préalable une observation significative s'impose. On s'est surtout efforcé d'élucider un problème de cette histoire si embrouillée, à savoir celui de la bataille de l'Allia⁴. Il serait abusif d'énumérer tous les arguments qui ont été avancés pour ou contre la tradition de Diodore ou de Tite-Live. Ce procédé ne me semble pas de bonne méthode et, à mes yeux, ne peut jamais conduire au but. Ce n'est que par la voie d'une conception qui envisagerait le problème dans sa totalité qu'on pourrait essayer de résoudre les problèmes particuliers. Pour mieux apprécier la valeur des

¹ Telle est du moins l'opinion de la plupart des savants. Cf. E. Norden, Ennius u. Vergilius. Leipzig-Berlin 1915, 112; Gelzer, Hermes 69, 49, rem. 4. Cependant, d'après Nap, l.c. 10, Polybe a utilisé dans l'histoire des relations celto-romaines deux sources distinctes, à savoir Fabius et Caton.

² On ne peut pas oublier que les récits de Diodore et de Tite-Live quant à leur ampleur sont bien semblables. Cf. Altheim, Epoch. d. röm. Geschichte I 164, qui a justement souligné leur interdépendance à ce point de vue. Bien entendu on ne peut y compter le discours de Camille.

³ Chose intéressante, on n'a pas jusqu'ici attiré l'attention sur le fait qu'Ennius, si le fameux passage (fr. 164 Vahlen) qua Galli ... moenia concubia vigilesque cruentant, doit être attribué au livre VIIème et non au IVème, n'a traité l'épisode de la prise de Rome par les Celtes qu'incidemment. Cf. O. Skutsch, The Fall of the Capitol. Journ. of Rom. Studies 43 (1953) 77 ss.

⁴ Des dernières mises au point de cette question ne citons que les oeuvres d'Altheim, Epoch. d. röm. Geschichte I 163 ss. et Italien u. Rom I 347 ss.

sources il faudrait, en partant des deux prémisses mentionnées ci-dessus, rapprocher les informations prises à ces sources et leur faire subir une analyse du point de vue de leur vraisemblance sans se préoccuper du nom de l'auteur¹. Ce qui nous gêne c'est le fait bien connu déjà, à savoir que la tradition de Fabius Pictor que l'on croit trouver chez Polybe n'est pas libre de falsifications et de mensonges². N'espérons donc pas trouver chez le même Polybe exclusivement des informations sûres et vraies.

La voie étant ainsi préparée du point de vue de la méthode et dans le cadre des possibilités, nous pouvons maintenant procéder à l'analyse des questions particulières sans essayer de pénétrer dans les détails³.

II. ANALYSE CRITIQUE DE LA TRADITION

Le problème initial qui s'impose au commencement de nos recherches, c'est la question de la provenance et du nom des Celtes qui ont pris Rome. On se souvient que chez Polybe nous ne trouvons pas cité le nom particulier de la tribu celtique qui envahit le territoire romain; de plus on constate d'après le même auteur que les Romains ont été envahis par les Celtes venus d'au-delà des Alpes⁴. À la lumière de cette tradition, les envahisseurs celtiques n'avaient pas encore eu de demeure stable en Italie et, formant des troupes en quête de butin, parcouraient la péninsule. Cette constatation dont la portée ne paraîtra que plus tard est confirmée par Tite-Live⁵ et, chose plus importante, par les auteurs grecs contemporains de cet événement. Ni chez Théopompe⁶, ni chez Héraclide le Pontique⁷, ni chez Aristote⁸, ni, enfin, chez Justin⁹, nous ne trouvons le nom de la tribu particulière des envahisseurs, qui y figurent sous leur dénomination générale de Celtes ou de Galates. Il est déjà ici à souligner qu' Héraclide le Pontique définit les nouveaux venus de façon très singulière¹⁰. De cette phrase on peut déduire que les auteurs du IV^{ème} et du III^{ème} siècles, Fabius Pictor y compris, faisaient venir les Celtes qui ont pris Rome d'au-delà

¹ Étant donné que cette tendance est très développée dans les études de ces derniers temps, il nous semble plus prudent, vu la complexité du problème, de nous exprimer avec réserve à cet égard.

² Voir l'affaire de Sagonte. Cf. M. Gelzer, *Römische Politik bei Fabius Pictor*. *Hermes* 68 (1933) 129 ss; Klotz, *Livius u. seine Vorgänger*, 290. Une autre preuve du manque de véracité de Fabius est la question de la guerre de l'an 225-2 présentée par lui comme provoquée par la politique agraire de l'an 232 de G. Flaminius. Cf. Ed. Meyer, *Kl. Schriften* II 394 s.

³ Par ex. l'affaire de Camille. Voir à ce propos l'étude exhaustive d'E. Täubler, *Camillus u. Sulla*. *Klio* 12 (1912) 219 ss., et avant lui celle de Hirschfeld, *Zur Camillus-Legende*. *Festschrift L. Friedländer*. Leipzig 1895 = *Kl. Schriften* 273 ss.

⁴ II 22,4 ss.

⁵ V 34.

⁶ Plin. N. H. III 9, 57.

⁷ Plut. Cam. 22.

⁸ Plut. *ibidem*.

⁹ VI 6, 5 et *passim*.

¹⁰ ὡς στρατὸς ἐξ Ὑπερβορέων ἐλθὼν ἐξωθεν ἥρηκοι . . . Ῥώμην.

des Alpes, des bords de l'Océan, et non de la région padane, occupée plus tard par eux.

Mais à côté de cette tradition unanime que l'on peut corroborer par les autres témoignages dont on parlera plus bas, il y a des relations d'auteurs du premier siècle av. n. è., premièrement chez Diodore, ensuite chez Tite-Live, Strabon, Plutarque, Appien et beaucoup d'autres qui nomment la tribu des Sénons comme envahisseurs du territoire romain¹. Etant donné cette divergence de la tradition antique en une matière particulièrement importante, il nous semble indispensable d'appliquer tous les moyens de la critique pour parvenir à un résultat positif. Il est certain qu'on accordera plus de confiance aux assertions des écrivains grecs et à Polybe formant probablement avec Justin la plus vieille couche de la tradition sur cette question² et l'on croirait moins aux informations des annalistes romains à qui remonteraient les versions de tous les auteurs, Diodore y compris, du premier siècle. Mais ce serait porter un jugement péremptoire sans analyser de tout point de vue ce problème important.

Pour parvenir à un résultat satisfaisant il faut nous rendre compte de tout ce que nous savons sur l'arrivée des Celtes en Italie³. Il est aujourd'hui communément admis, à la lumière de la tradition littéraire et des données archéologiques, que la grande poussée des Celtes eut lieu environ l'an 400 av. n. è. et dura des dizaines d'années. D'après la tradition de Polybe qui donne le récit le plus détaillé de la prise de possession de l'Italie du Nord par les Celtes, nous pouvons nous imaginer les étapes de l'invasion celtique et les modalités de l'occupation des deux rives du Pô. On n'a pas peine à se représenter la situation agitée dans laquelle devait se trouver l'Italie exposée pendant tout le IVème siècle aux razzias impétueuses des Celtes qui ont pénétré jusqu'aux extrémités méridionales de la péninsule, en Apulie et en Calabre. Cette période transitoire a duré sous sa forme violente, comme l'atteste Polybe, au moins un demi-siècle et il est permis de supposer que l'occupation des territoires d'Italie par les Celtes n'a pris sa forme définitive qu'après les combats prolongés dont il parle après avoir mentionné la prise de Rome par les Celtes⁴.

Qu'il en ait été ainsi, nous en avons maintenant des preuves assez explicites dans le matériel archéologique. La dure résistance des cités étrusques de la Cispadane et même de la Transpadane, qui n'a pris fin qu'environ en 350, parle vivement de la lutte acharnée que les Celtes en quête de nouvelles terres ont menée en Italie. Il est donc bien probable que les Celtes qui se sont conduits

¹ Cf. Mommsen, *Röm. Forsch.* II 300 ss.

² Cf. Hirschfeld, *Timagenes u. die gallische Wandersage.* Kl. Schriften, I ss.

³ C. Hubert, *Les Celtes.* Paris 1932, 11 ss. Mais, à mon sens, Hubert a tort de juger tous les témoignages de Tite-Live, par ex. quant à l'aptitude des Celtes à négocier en vertu de V 35, comme méritant créance.

⁴ Cf. Hubert, *l.c.* 21.

d'abord en vagabonds et en pillards, en chercheurs d'aventures, même en Grèce, ne se sont établis dans les cadres territoriaux mentionnés par Polybe, qui peut-être puisait ses informations chez Caton¹, qu'environ en 350. La tradition du Pseudo-Scylax provenant de la moitié de IV^eme siècle montre qu'il pouvait en être ainsi. D'après cet auteur, c. 18, les villes étrusques de Spina et Hatria étaient encore entre les mains des Étrusques pendant que les Celtes n'occupaient qu'une petite bande de terre le long de la côte. Et, à vrai dire, il nous semble peu probable que les Celtes que nous voyons parcourir toute l'Italie, s'engager comme mercenaires dans l'armée de Denys I^{er} de Syracuse, aient déjà eu des demeures stables dans la vallée du Pô.

Mais, si nous nous figurons la poussée celtique comme une migration de tribus, avec femmes et enfants, comme cent ans plus tard l'invasion des Celtes dans la péninsule des Balkans², rien ne s'opposerait à la supposition qu'à côté de ces groupements l'Italie ne fût envahie par des troupes composées uniquement de guerriers. L'expression utilisée par Héraclide le Pontique, mise à côté de l'information de Justin XX 5,4, à savoir que ces mêmes Celtes qui avaient pris Rome sont entrés en contact avec Denys I^{er} assiégeant Locres et Crotone et lui ont procuré des mercenaires, semble confirmer cette thèse.

Il est notamment peu probable que ces Celtes se soient aventurés jusqu'aux confins de l'Italie avec leurs familles. Un autre argument peut en outre être déduit du récit de Polybe II 22. Si nous ne supposons pas la présence d'autres groupes celtiques en Italie en dehors des tribus citées par Polybe, l'appel des Boiens et des Insubres aux Transalpins en 225 est incompréhensible, ces mêmes Boiens et Insubres étant eux aussi des Transalpins. Évidemment les rois de ces tribus savaient qu'à côté d'eux, les guerriers seuls, les Gaesati de l'époque postérieure étaient venus en Italie de la Gaule³; c'est à eux qu'ils ont fait appel en 225, et c'est avec eux qu'ils durent lutter au IV^eme siècle pour défendre leurs terres récemment conquises. En résumé il nous semble que Rome est tombée entre les mains d'une bande celtique probablement hétérogène⁴ et il n'est pas étonnant que la plus vieille couche de la tradition ne sache citer aucun nom précis, aucune tribu, à laquelle auraient appartenu les vainqueurs des Romains.

¹ Cf. Hirschfeld, Timagenes u. die gallische Wandersage. Kl. Schrift. 15, qui cite la littérature relative à ce problème.

² Hubert, l.c. 25. Des témoignages cités par lui on peut déduire que l'invasion celtique s'était accomplie à l'instar d'un „*ver sacrum*“ des Italiotes.

³ Quant aux Gésates, voir R. Heuberger, Die Gaesaten. Klio 31 N. F. 13 (1938) 76 ss. Pour appuyer cette hypothèse on peut citer le passage de Strabon V 1,6: μέγιστα δ' ἦν τῶν Κελτῶν ἔθνη Βοιοὶ καὶ ... οἱ τὴν Ῥωμαίων ποτὲ ἐξ ἐφόδου καταλαβόντες Σέρονες μετὰ Γαισατῶν.

⁴ C'est l'opinion de Homo, C. A. H. VII 562 ainsi que de Hubert, l.c. 18, qui en traitant ce problème, comme en outre dans l'examen du chiffre des troupes gauloises transmis par les sources, semble aller plus loin que ne le permet l'état de notre tradition annalistique.

Mais que devons-nous penser de la tradition annalistique qui attribue à la tribu des Sénons la prise de Rome ? On sait bien que les Sénons étaient les plus proches voisins des Romains ainsi que de la ville étrusque de Clusium qui joue un rôle important dans le récit annalistique concernant l'origine du conflit entre les Celtes et les Romains. Pour mieux comprendre la valeur de ce récit il faut se représenter qu'il renferme nombre de traits qu'on n'a pas de peine à caractériser comme non historiques, à savoir l'historiette d'Aruns, le nom du roi celtique Brennus, emprunté sans aucun doute à l'invasion celtique du III^{ème} siècle, toutes les péripéties qui se sont déroulées entre les Celtes et les Romains depuis l'aventure des espions ou bien des ambassadeurs romains à Clusium jusqu'à la marche des Celtes contre Rome. Toute cette atmosphère de vengeance d'un délit dont est empreinte la narration des annalistes, aux yeux desquels le coup qui a touché les Romains fut un juste châtement pour avoir violé le droit des gens, nous mène à la compréhension de cette tradition. On ne peut pas oublier qu'un siècle après cette marque d'orgueil celtique les Romains ont châtié à leur tour les Sénons en se vengeant de la prise de Rome.

Convaincu que l'historiographie romaine était l'instrument de la politique, nous devons nous poser la question de savoir, si les annalistes n'ont pas inventé toute cette affaire de Clusium, avec les Sénons comme principaux acteurs, pour justifier par là, du moins aux yeux des Romains, leur procédé contre cette tribu celtique en 283. Ensuite il est à noter, pour mieux souligner la situation, que nous trouvons chez Polybe une scène qui nous semble être en rapport étroit avec la version des annalistes concernant le rôle des Sénons lors de la prise de Rome. Ayant notoirement subi un échec de la part des Sénons (284)¹, les Romains envoyèrent des messagers pour traiter de la mise en liberté des prisonniers. Au dire de Polybe ces messagers furent tués par les Celtes. Cet abus fut promptement châtié par les Romains qui expulsèrent les Sénons de leur territoire. Sans nous prononcer sur l'historicité de cette version, nous voudrions mettre l'accent sur la possibilité qu'elle ait servi de modèle aux annalistes dans leur élaboration de l'épisode de Clusium et de la participation des Sénons à la prise de Rome. Cette conclusion nous semble d'autant plus justifiée que le nom des Sénons est cité pour la première fois par Diodore dans un contexte de nature à susciter des soupçons. Et ici nous pouvons utiliser avec profit les conséquences d'une nouvelle appréciation de Diodore. La relation d'un annaliste de l'époque de Sylla vaut, sans aucun doute, moins que celle, transmise par l'intermédiaire de Polybe, du récit de Fabius Pictor, ou si nous voulions aller plus loin, de la tradition orale romaine fixée probablement environ en 300 av. n. è.

Pour appuyer cette hypothèse il faut avoir recours à la relation de Polybe qui dûment interprétée doit nous fournir d'autres preuves convaincantes. Il s'agit ici de la phrase de Polybe II 18, dont voici le contenu: Γενομένων δ' ἀντισπάσματος, καὶ τῶν Οὐενέτων ἐμβαλόντων εἰς τὴν χώραν αὐτῶν,...

¹ Polyb. II 19; Appien, Samn. 7, Kelt. 11.

ἐπανῆλθον εἰς τὴν οἰκίαν. Polybe veut nous faire croire que les Celtes assiégeant le Capitole ont été forcés de lever le siège en conséquence d'une invasion des Vénètes sur leur territoire. Ici surgit une grave difficulté, Polybe n'ayant parlé nulle part de la οἰκία des Celtes. Si nous voulions interpréter cette expression de la même manière que le terme χώρα dont il parle à deux reprises, la question serait claire. Polybe nous décrit dans le II^{ème} livre les pourparlers des Boiens et des Insubres avec les Celtes Transalpins qu'ils voulaient induire à faire avec eux cause commune contre les Romains. C'étaient donc les Transalpins, au dire de Polybe, qui avaient pris Rome, par conséquent sous le terme de οἰκία ou bien de χώρα il faudrait comprendre les territoires situés au-delà des Alpes. Mais on ne peut pas oublier qu'une telle interprétation nous met en contradiction avec la relation de Justin¹ dont nous ne sommes pas en état de vérifier la valeur, et selon laquelle ces mêmes Celtes qui ont pris Rome étaient entrés quelques mois plus tard en contact avec Denys I^{er} de Syracuse. Si l'information de Justin s'appuyait sur la tradition grecque contemporaine, elle mettrait en doute l'historicité de la diversion des Vénètes.

Mais à côté de ce raisonnement nous avons un autre argument qui milite fortement contre l'historicité de la relation de Polybe ayant trait à la diversion des Vénètes d'une part, contre l'identification des envahisseurs celtiques de l'an 386 avec les Sénons de l'autre. On a déjà souligné que l'action des Vénètes dirigée contre le territoire celtique a pu être le doublet d'une situation identique qui se place pendant la guerre romano-celtique de l'an 225 -2², quand les Vénètes ont attaqué de concert avec les Cénomans le territoire des Insubres. La source de cette dernière tradition est sans aucun doute Fabius Pictor qui avait pris part à ce combat. Donc, si nous avons affaire aux Sénons, il est difficile de comprendre comment une invasion des Vénètes aurait pu les détourner du siège de Rome. Nous savons, du reste, par Polybe que l'effet de cette diversion fut nul, les Celtes ayant pris la rançon et le butin sans être arrêtés par personne. La mention d'un doublet dans l'histoire de la république romaine suscite toujours des soupçons qui se sont démontrés tant de fois justifiés. Passons maintenant à notre argument principal signalé déjà ci-dessus. On sait bien que les tribus celtiques n'ont pas encore pu avoir de demeures stables vers 390, du moins les Sénons qui semblent être les derniers venus des Celtes³. Sans courir le risque d'être hypercritique, il nous semble que cette tradition de Diodore selon laquelle les Sénons ont voulu quitter leur territoire à cause de la chaleur qui y régnait est inadmissible⁴. Cet état de choses est incompatible.

¹ XX 5, 4.

² Voir à ce sujet les remarques hésitantes de Thouret, l.c. 109 et de Hirschfeld, Kl. Schrift. 271.

³ Cf. Hubert, l.c. 21, d'après lequel les Sénons ne se sont fixés entre Aesis et Utens que vers 350, date confirmée par les données archéologiques.

⁴ Il est à remarquer que d'après Diodore XIV 113, les Sénons devaient être en possession des terres qu'ils n'avaient en réalité occupées que vers 350, déjà avant leur prise.

avec la conception que nous avons de la migration celtique en Italie dépeinte ci-dessus.

Mais tout cela mis à part, il faut rejeter la relation de Polybe, selon laquelle les Vénètes ont pu influencer la position des Sénons assiégeant Rome. D'après les relations des sources littéraires, les Sénons ont pris possession des terres situées sur le versant est de l'Apennin avoisinant les Lingons, dont les territoires touchaient le rivage du Pô¹. Ayant devant nous cette situation géographique nous devons nous demander maintenant comment les Vénètes, célèbres comme éleveurs de chevaux², ont pu surmonter les obstacles naturels qui les séparaient du territoire des Sénons, à savoir le delta du Pô et les marécages très étendus. Et après avoir traversé l'eau, ils se seraient trouvés en face non des Sénons mais des Lingons, leurs plus proches voisins. Si cette situation nous paraît suspecte, disons-le même ouvertement, inadmissible en l'an 386, elle est tout autre en 225-2, quand les Vénètes avec leur cavalerie ont pu sans le moindre obstacle harceler les Insubres dans les plaines alluviales situées au nord du Pô. C'est ainsi qu'on peut éliminer comme invention des annalistes romains la relation attribuant aux Sénons la prise de Rome. Mais la tradition de Polybe, elle aussi, était déjà falsifiée sous l'impression des événements postérieurs, notamment de la guerre de l'an 225-2, opinion que nous aurons l'occasion de développer et d'approfondir ci-après. Et, peut-être est-ce déjà Fabius Pictor qui, agissant comme instrument de la politique romaine, a opéré cet emprunt. En conclusion on peut déduire de sources dignes de foi que Rome n'a pas été prise par les Sénons après une action préparatoire pleine d'épisodes et de détails³, mais par une troupe celtique avide d'or et de butin. Cette constatation forme un fondement assez important pour les recherches suivantes.

L'autre problème dont la solution nous paraîtrait marquer un nouveau pas en avant c'est celui de la voie parcourue par les Celtes dans leur marche vers Rome. A cette question sont intimement liées deux autres, à savoir l'affaire de Clusium et le lieu de la bataille entre les Celtes et les Romains. Sur toutes ces questions Polybe nous laisse incertains et l'unique point de repère, le nom du fleuve de l'Allia, ne suffit pas à nous éclaircir. Dans la tradition annalistique depuis Diodore s'était conservée la description pittoresque de l'épisode de Clusium. Ici nous nous trouvons devant un proverbial embarras de

présumée de Rome, ce qui indique qu'il ne se représentait pas clairement l'occupation de l'Italie du Nord par les Celtes.

¹ Voir à ce sujet l'examen de la tradition donné par Hubert, l.c. 19 ss.

² Cf. Wiesner, Italien u. die große Wanderung. Welt als Geschichte 8 (1942) 218.

³ On sait bien que dans la tradition annalistique l'invasion des Sénons était présentée comme un acte de vengeance, un „Rachezug“. A cette conception fut jointe une autre qui dépeignait Rome comme rempart de l'Italie unifiée. Toutes ces notions proviennent de l'époque postérieure et nous permettent de pénétrer dans le mécanisme des changements apportés par les annalistes à la tradition originale relative à cet événement. Cf. par ex. Thouret, l.c. passim.

richesse, l'affaire étant dotée d'une foule de détails, ce qui, au préalable, nous dispose à la méfiance. Comme on sait, le prélude à cette affaire est l'histoire d'un certain Aruns dont l'action a poussé les Celtes à envahir l'Italie¹. Mais à côté de cette version attestée déjà chez Caton², nous en trouvons une autre citée chez Pline qui, elle aussi, est en rapport avec l'invasion des Celtes³. La critique historique a, naturellement, réduit à sa juste valeur ces deux histoires dont le but était de souligner l'importance agricole des terres italiennes, unique appât pour les Celtes, chercheurs de territoires cultivables. Mais en dehors de ce détail on n'a pas jusqu'ici fait subir à une analyse critique la suite de cette version citée pour la première fois dans sa totalité par Diodore qui à l'exception de ce passage est d'accord dans les parties essentielles avec le récit de Tite-Live. Il n'est pas possible à mon sens, du point de vue de la méthode, de diviser toute cette histoire embellie d'un amas de détails en une partie fantaisiste, celle d'Aruns, et l'autre historique, dont le centre local se trouve à Clusium. Il me semble que des arguments assez explicites tant historiques que formels parlent fortement contre l'historicité de l'affaire de Clusium, qui malgré les hésitations élevées de temps en temps trouve toujours une place dans la littérature historique contemporaine⁴.

Premièrement, le silence de Polybe n'est pas sans valeur. La sobriété avec laquelle il dépeint l'histoire des relations celto-romaines au IV^e siècle ne nous permet pas de croire qu'il a pu trouver un récit si détaillé chez les historiens de la couche la plus ancienne, à savoir chez Pictor, Cincius ou bien Caton, en laissant de côté les „*tabulae pontificum*“ dont on ne sait rien de précis. Il est possible qu'il ait connu l'histoire d'Aruns, si les mots „ἐκ μικρᾶς προφάσεως“ ont rapport à elle, ce qui n'est nullement prouvé, mais rien ne nous autorise à penser qu'il a trouvé cette histoire localisée à Clusium, tout au moins qu'il l'a trouvée vraisemblable⁵. Et vraiment, si nous parcourons toute cette histoire si détaillée, dont le champ d'action est premièrement Clusium et ensuite Rome, nous sommes fortement enclins à la rejeter en bloc pour la raison qu'elle est mal attestée et si embellie que personne n'a consenti à la placer dans une source antérieure à l'époque des Gracques.

Mais à côté de ces considérations de caractère plutôt subjectif il y a d'autres

¹ Liv. V 33; Plut. Cam. 15. Pour mettre en relief la valeur de cette historiette, il faut souligner que chez Justin XLIII 3,4 ss., nous trouvons une autre histoire relative à la propagation du vin chez les Celtes, cette fois liée avec la fondation de Marseille. Il est bien probable que cette version a servi de modèle à une autre située à Clusium.

² Fr. 36 = Aul. Gell. XVII 13,4.

³ N. H. XII 5.

⁴ Par ex. par Hirschfeld, Kl. Schrift 269 ss.

⁵ On ne peut pas exclure la possibilité que l'affaire d'Aruns, citée déjà par Caton, n'ait pas été à l'origine mise en rapport avec la prise de Rome par les Celtes, à laquelle elle n'aurait été incorporée que plus tard au moyen de la juxtaposition observée tant de fois chez les annalistes romains. Cf. par ex. la question des oies, des „sexagenarii“. Cf. A. Schwegler, Römische Geschichte III. Tübingen 1858, 257, rem. 3.

arguments qui n'ont pas été jusqu'ici dûment utilisés. Déjà la première phrase citée par Diodore, qui met en contact les Sénons et Clusium, nous semble suspecte. Diodore XIV 113 dit notamment que les Sénons vinrent chercher des terres à Clusium et qu'ils voulaient s'établir en Étrurie. Sans même être influencé par les réflexions générales sur l'arrivée des Celtes en Italie présentées ci-dessus, il nous semble que cette situation est inadmissible. Dans quel but les Celtes auraient-ils cherché en 386 de nouvelles demeures au-delà de l'Apenin, au milieu de l'Étrurie, séparés de leurs compatriotes par une chaîne de montagnes qui d'ailleurs faisait obstacle à leur poussée. Et tout cela aurait lieu en même temps que les Celtes guerroyaient avec acharnement contre les Étrusques de la Cispadane et de la Transpadane. Il faut plutôt admettre que l'auteur de cette version ne se figurait pas la vraie situation de l'Italie dans les premières décades du IV^{ème} siècle. Ensuite, si nous passons en revue l'histoire peu connue des relations celto-romaines du IV^{ème} siècle, nous n'y verrons aucune mention d'une réussite des Celtes d'empiéter sur le territoire proprement étrusque, encore moins d'une tentative d'y trouver des demeures stables. Au III^{ème} siècle quand l'esprit défensif des Étrusques fut brisé par l'offensive menée de deux côtés, à savoir par les Romains et par les Celtes, on constate la présence d'armées celtes en Étrurie agissant, du reste, de concert avec les troupes des cités étrusques. Mais, personne ne dit que les Celtes aient cherché à s'établir au milieu de l'Étrurie. D'autre part on a souligné déjà qu'il est du moins étrange que Clusium disparaisse subitement des récits des annalistes après que le centre d'action se fut transmis à Rome, comme si cette ville ne servait que pour la mise en scène de toute cette histoire¹. Tout cela nous porte fortement à penser que la partie de l'épisode de Clusium qui a trait à l'invasion des Sénons n'a pas de fondement historique.

Mais si nous l'analysons sous l'angle romain, ces soupçons ne cessent de s'accroître. Les écrivains antiques soulignent à plusieurs reprises le rôle important que Clusium a joué dans les rapports belliqueux entre les Romains et les Étrusques au III^{ème} siècle. Notre principale source Polybe décrit le siège de Clusium par les Celtes et son information que cette place forte est éloignée de Rome de trois jours de marche mérite d'être soulignée ici². Ce siège de Clusium est intimement lié à l'histoire des Sénons, ce qui nous pousse de nouveau à nous demander si nous n'avons pas ici affaire à un doublet, un transfert d'un événement du III^{ème} siècle au IV^{ème} avec le but de combler le vide de celui-ci au moyen des détails empruntés à celui-là. Le nom de Clusium sonnait mal aux oreilles des Romains. C'est de cette ville que Porsenna s'était mis en marche contre Rome et que son fils Aruns, dans lequel nous verrions volontiers le

¹ Observation faite par G. C. Lewis, *Untersuchungen über die Glaubwürdigkeit der altrömischen Geschichte* II, Hamburg 1863, 273. Cf. Hirschfeld, *Kl. Schrift.* 270.

² II 25: ἡδη δ' αὐτῶν, sc. Κελτῶν, περὶ πόλιν ὕντων ἢ καλεῖται Κλούσιον, ἀπέχει δ' ἡμερῶν τριῶν ὁδὸν ἀπὸ τῆς Ῥώμης.

prototype de notre Aruns de Clusium, était parti pour ses conquêtes aux alentours de Rome. Clusium avait donc laissé dans l'esprit des Romains une impression plutôt défavorable et on ne peut pas s'étonner qu'on ait voulu faire naître dans cette ville la catastrophe qui un jour devait s'abattre sur eux. A vrai dire les annalistes se sont rendu compte de l'in vraisemblance de la situation de Clusium envers Rome. Nous trouvons notamment chez eux des mentions tout-à-fait contradictoires à ce propos, ce qui confirme le soupçon que l'on n'en savait rien de précis au II^{ème} siècle.

L'analyse des rapports romano-étrusques au IV^{ème} siècle indique qu'ils n'étaient point amicaux¹. La destruction de Véies, le sort de Falères, Capène et d'autres villes sont des témoignages assez explicites à cet égard. D'autre part il ne faut pas oublier que Clusium jusqu'au commencement du III^{ème} siècle fut l'ennemi des Romains, ce qui, joint aux réflexions précédentes ne, nous dispose nullement à accepter les récits de Diodore, de Tite-Live ou de Plutarque². Il y faut voir plutôt les étapes d'un enrichissement de l'histoire modifiée avec le concours de nouveaux éléments, adaptés aux circonstances changeantes de la vie de Rome aux II^{ème} et I^{er} siècles. Mais avant de nous exprimer définitivement à ce propos essayons hypothétiquement d'appliquer le résultat atteint jusqu'ici, c'est-à-dire le manque de fondement historique de l'affaire de Clusium, à l'autre point capital du problème, à savoir la direction présumée de la marche des Celtes sur Rome. Kromayer³ a voulu les conduire de Clusium à travers le Tibre qu'ils devaient franchir à proximité de Tuder (Todi), ensuite le long de la rive gauche du fleuve jusqu'à l'Allia. Et ici nous abordons, muni des réflexions exposées ci-dessus, ce problème épineux, tant de fois discuté, celui du lieu de la bataille livrée par les Celtes aux Romains.

Les partisans de la théorie de la rive droite s'appuient uniquement sur l'expression de Diodore XIV 114 ἐξελθόντες δὲ πανδημεὶ καὶ διαβάντες τὸν Τίβεριν, les autres détails de son récit étant identiques avec ceux que nous trouvons chez Tite-Live et Plutarque⁴. Mais la valeur de Diodore a aujourd'hui diminué de telle façon qu'il serait un peu hasardeux de faire état de ces deux mots au sens plutôt vague, arrachés à un contexte plutôt incomplet, pour contredire la tradition de Tite-Live⁵, bien claire à ce sujet et corroborée par

¹ Voir à ce propos les justes remarques de T. Frank, *On Rome's conquest of Sabinum, Picenum and Etruria*. Klio 11 (1911) 386. La situation est bien différente à la fin du III^{ème} siècle. Cf. J. Göhler, *Rom u. Italien*. Breslau 1939, 20, ce qui, vu les conditions changées, ne peut pas être préjudiciable à l'attitude de Rome en 400 env. av. n.è.

² Cette hostilité a été soulignée à juste titre par Beloch, *Röm. Geschichte* 608 ss.

³ *Drei Schlachten aus dem Altertum*. Abh. Sächs. Ak. Phil. Hist. Kl. 34 N. 5, 1921.

⁴ Chose surprenante, l'unique trouvaille archéologique qu'on puisse mettre en rapport avec les Celtes dans ces parages est l'inscription latino-celtique d'un certain Ategnotos, qui, d'après ces indices, provient d'une époque tardive. Cf. Hubert, l.c. 32.

⁵ Voir la discussion du problème du point de vue géographique par H. Nissen, *Italische Landeskunde* II 1 (1902) 607.

les données épigraphiques¹. Et pour se débarrasser de ce fantôme ne serait-il pas prudent d'avoir recours à l'interprétation raisonnable de Niebuhr² injustement oubliée jusqu'ici? Niebuhr, qui restait sous l'impression de la haute valeur de la tradition de Diodore, en a tiré la conclusion que les Romains attendaient l'arrivée des Celtes (des Sénons d'après Diodore) du côté nord de la ville de Clusium, assiégée par les envahisseurs, c'est pourquoi ils auraient pris la position défensive sur la rive droite du Tibre. De cette manière Niebuhr a voulu apparemment juxtaposer deux versions contradictoires de Diodore et de Tite-Live en supposant que les Romains, ayant appris l'arrivée des Celtes de l'est, ont franchi le Tibre et ont pris position sur l'Allia.

La combinaison du grand savant, tout en restant ingénieuse, n'est pas nécessaire aujourd'hui. Si l'affaire de Clusium est bien l'invention des annalistes d'époque tardive, forgée avec le concours d'éléments divers, nous n'avons pas besoin de croire à ces manoeuvres de l'armée romaine, le passage discuté de Diodore étant l'écho et la conséquence de fourberies des annalistes mal comprises par Diodore „der elendeste aller Scribenten“, pour citer la fameuse phrase de Mommsen³. Il se peut que le souvenir du champ de bataille situé aux rives de l'Allia s'était conservé dans la tradition sacrée⁴. Et maintenant nous pouvons essayer de dire par quelle voie les Celtes s'étaient avancés vers Rome. Les sources nous manquent ici, mais du fait de la localisation de l'Allia nous sommes en état de supposer, si nous excluons l'histoire de Clusium, que les Celtes pouvaient s'avancer par cette route fameuse tant de fois utilisée dans l'histoire militaire de la péninsule, notamment la future „via Flaminia“ qui, par les routes parcourant la terre des Sabins, se joignait à la „via Salaria“ conduisant directement à l'Allia.

La poussée des Celtes effectuée si souvent au cours des IV^{ème} et III^{ème} siècles a induit les Romains à bâtir la „via Flaminia“ pour surveiller les Celtes à Arminum, célèbre „Porta Galliae“ par laquelle ils faisaient irruption dans l'Italie Centrale⁵. Quoiqu'il en soit, il nous semble utile d'analyser ce problème à l'aide des arguments tirés d'une nouvelle appréciation des sources. Et maintenant nous abordons une autre question qui bien qu'elle n'ait pas été soulevée jusqu'à présent, le mérite néanmoins. Elle peut nous fournir de nouvelles preuves de nature à approfondir le problème de la fonction de l'annalistique romaine. Ils'agit ici du passage de Polybe II 18, dans lequel il parle de la victoire des Celtes sur *Ῥωμαίους καὶ τοὺς μετὰ τούτων παραταξαμένους*.

¹ C. I. L. X 1421.

² Röm. Geschichte II (1873) 464 s.

³ Römische Chronologie² 1859, 125.

⁴ Telle est du moins l'opinion d'Altheim, Epoch. d. röm. Geschichte I 169. Cependant, il est à souligner que la tradition de Tite-Live contient déjà la conception d'un „Rachezug“ beaucoup plus développée que nous ne la trouvons chez Diodore, ce qui parlerait plutôt en faveur de la plus grande pureté, relative, bien entendu, de la tradition de ce dernier.

⁵ On cite notamment dans une inscription „conlegium iumentariorum Portae Gallicae“. Cf. Nissen, I.c. II 1, 383.

Sous ce dernier terme on comprenait les Latins. On a déjà, non sans surprise, souligné que Polybe, sobre et circonspect comme il l'est, donne sur ce point un détail de plus que les annalistes qui nulle part ne parlent de la participation des Latins à la bataille de l'Allia¹. Au premier coup d'oeil on serait enclin à juger le problème comme non existant, puisque le témoignage de Polybe semble suffisamment fondé. Mais nous savons d'après les considérations développées dans le présent travail qu'on ne doit pas trop presser la tradition de Polybe sur cette question. Elle trahit des falsifications, des doublets indiqués déjà ci-dessus sans que la liste en soit épuisée. Pour analyser ce vaste complexe de couches de tradition, produit de diverses tendances et courants surtout politiques, il nous semble opportun de n'en tirer qu'un seul, à savoir celui qui vise à présenter Rome comme le rempart de l'Italie destiné à grouper autour de lui le reste de la péninsule. Ce courant, qui se trahit avec une force particulière dans les récits des annalistes, est, bien entendu, mieux à sa place dans les circonstances postérieures à celles qui accompagnent la prise de Rome par les Celtes. C'est la grande guerre de l'an 225-2 qui fut véritablement le combat livré aux Celtes par l'Italie unifiée sous la direction des Romains.

Avons-nous le droit appuyé sur un raisonnement comme celui-ci de rejeter la relation de Polybe exprimée, soulignons-le, sous le terme vague de παραταξάμενοι, au lieu de σύμμαχοι ou bien de Λατῖνοι? La réponse doit être plutôt négative, bien que nous ayons divers témoignages parlant de l'attaque des villes latines contre Rome aussitôt après le départ des Celtes, bien plus de l'alliance de quelques-unes avec les Celtes². Ce sont là, cependant, des arguments assez faibles pour ébranler la validité de Polybe sur cette question. Mais, et voici le point le plus compliqué de la tradition des annalistes, dans quel but Diodore et d'autres écrivains qui représentent la couche tardive se taisaient-ils à ce sujet rejetant sur les Romains seuls le poids de la campagne? Si nous osons nous aventurer au-delà des hypothèses, il faudrait chercher l'explication de ce fait étrange dans l'attitude des annalistes de l'époque des Gracques qui disposés négativement envers les „socii“ ont voulu les éliminer du conflit celto-romain. On sait que des considérations de cet ordre ont pu jouer un certain rôle dans la formation de l'annalistique romaine³, mais on doit se demander quel en était le but précisément dans ce cas. Le manque d'une réponse logique nous oriente vers une autre solution qui s'impose. C'est que Polybe fut l'écho de la tradition conçue sous l'impression de la grande guerre de l'an 225-2 et que c'est à elle qu'il faut attribuer la mention des παραταξάμενοι.

¹ Voir à ce propos la discussion chez Lewis, *Unters. über die Glaubw. der altröm. Geschichte* II 261.

² Voir, cependant, Göhler, l.c. 8, qui cite les sources relatives à cette question.

³ Le même cas est arrivé précisément avec le concours des Samnites dans l'écrasement de l'insurrection des Latins (338), lequel fut aussi voilé par les annalistes. Cf. B. Niese, *Grundriß der röm. Geschichte*⁵. München 1923, 55.

omise, pour des raisons qui nous échappent complètement, de la tradition des annalistes tardifs.

Si le résultat de cette argumentation n'est pas satisfaisant, il nous sert du moins à indiquer les difficultés cachées auxquelles on se heurte dans les recherches sur ce thème épineux. Si nous allons plus loin, toujours en confrontant Polybe avec le reste de la tradition¹, nous rencontrons une autre question très discutée, celle de la prise de Rome seule et de l'intervalle qui sépare la bataille de l'Allia de cet événement. A ce sujet les informations des sources sont plutôt contradictoires². Pour arriver à une situation plus claire il faut tout d'abord analyser la relation de Polybe. Et encore une fois il faut constater que son récit est plein d'énigmes. On ne peut pas s'exprimer autrement après avoir parcouru attentivement les relations qu'il donne à trois reprises sur l'invasion des Celtes et sur la prise de Rome (I 6, II 18; 22). On a déjà souligné une certaine obscurité de son expression Κελτοὶ . . . ἐπόμενοι τοῖς φεύγουσι τρισὶ τῆς μάχης ἡμέραις . . . κατέσχον . . . τὴν Ῥώμην³. Si nous voulions nous appuyer sur le texte de Polybe, il en résulterait que le champ de bataille était éloigné de Rome de trois jours de marche. Et il y aurait lieu de se souvenir d'un autre passage de Polybe, II 25, dans lequel il indique précisément cette même distance entre Clusium et Rome. Est-ce par hasard que nous nous trouvons ici vis-à-vis de cette coïncidence qui suggère un certain lien, bien imprécis, entre les données des sources de Polybe et la tradition des annalistes?

Cependant, une autre interprétation est possible, celle qui met aussi Polybe en contact avec les données des annalistes, mais dans un autre contexte. Nous savons par Diodore et d'autres sources que les Celtes se sont postés après la bataille devant les murailles de Rome, les portes fermées ou ouvertes, et qu'ils n'y sont entrés qu'au bout de trois jours. L'information de Polybe peut se rapporter à cette attitude des Celtes, laquelle a toujours paru un peu incompréhensible, vu leur fougue et leur esprit belliqueux.

Mais ce n'est pas la dernière surprise que nous prépare l'historien grec. Dans un autre récit de l'invasion de Rome, II 22, nous trouvons un passage qui présente une contradiction nette avec celui cité plus haut: μετὰ τὴν μάχην ἔξ ἐφόδου κατέσχον αὐτὴν τὴν Ῥώμην sc. Κελτοί. D'après le sens strict du mot et l'usage courant de Polybe ἔξ ἐφόδου doit être interprété: aussitôt après la bataille, en d'autres termes: le jour même de la bataille⁴. Cette interprétation du point de vue de la vraisemblance paraît la plus proche de la vérité. Cependant, cette contradiction manifeste nous permet de caractériser la manière de

¹ Quant à ce procédé voir les remarques de Gelzer, *Hermes* 70, 272.

² Cf. E. Pais, *Storia di Roma* I 2. Torino 1899, 82.

³ Polybe II 18. Voir à ce sujet les remarques de Lewis, *Untersuch. über die Glaubw. d. altröm. Geschichte* II 261, rem. 84.

⁴ Cf. *Thesaurus graecae linguae* III. Parisiis 1835, s. v. ἐφοδος. L'usage de Polybe: primo impetu ac ex itinere.

Polybe d'écrire l'histoire d'une part, mais de l'autre elle nous donne la possibilité de pénétrer dans l'état de la tradition romaine concernant l'invasion celtique. Elle était déjà en partie viciée en ce temps-là. On se demande naturellement quelles pouvaient être les causes de la formation de ces différentes données chronologiques. Le peu que renferme Polybe ne nous met pas en état de répondre à cette question. Nous devons nous référer à la tradition annalistique conservée chez Diodore et chez Tite-Live, laquelle grâce à la richesse de détails nous donne plus d'espoir de réussir dans cette tâche.

Les annalistes veulent donc nous faire croire que les Celtes ont soupçonné un guet-apens de la part des Romains et que c'est pourquoi ils campaient devant les murailles. Il est à noter, cependant, qu'entre Diodore et Tite-Live subsiste une différence importante. Tandis que selon le premier les Celtes ne sont entrés de force que le quatrième jour, après avoir enfoncé les portes¹, d'après le second ils n'ont attendu devant les portes ouvertes qu'un jour². Dans ce noeud très embrouillé des relations entre les sources littéraires, c'est l'archéologie qui nous vient en aide.

Les recherches archéologiques faites depuis bien des années ont éclairci en grande partie l'énigme des murailles dites „serviennes“³. D'après des indices jugés aujourd'hui incontestables, ces murailles n'ont été élevées qu'après le départ des Celtes en 378. Auparavant, il n'y avait pas de murailles au sens propre du mot, mais un „agger“ avec tout au plus une palissade. Cet agger était probablement tombé, du moins partiellement, en désuétude à l'époque de l'invasion celtique et ainsi ne pouvait servir aux Romains de moyen de défense⁴. A Rome ainsi que dans l'Athènes des guerres médiques, seule la citadelle était en état de se défendre. Du reste, c'est de cette façon que nous pouvons nous figurer les motifs qui ont induit les Romains, sûrement bien au courant de la fougue irrésistible des Celtes, après les défaites écrasantes subies par les Étrusques en champ ouvert, à livrer une bataille rangée aux envahisseurs.

Mais après cette constatation, les récits des annalistes sur la prise de Rome semblent sans valeur historique étant, du reste, d'une invraisemblance manifeste. L'essentiel de cet événement nous semble emprunté à un autre fait historique. Nous trouvons chez Pausanias, VII 16,7, à propos du siège de Corinthe en 146, un récit qui coïncide mot pour mot avec ceux de Diodore, de Tite-Live et de Plutarque sur la prise de Rome par les Celtes: Ἀχαιῶν δὲ οἱ ἐς Κόρινθον ἀποσωθέντες μετὰ τὴν μάχην ἀπεδίδρασκον ὑπὸ νυκτὸς εὐθύς. ἀπεδίδρασκον

¹ XIV 115,6.

² V 41, 4.

³ Cf. Graffunder, Klio 11 (1911) 83 ss; R. E. II R. I (1920) 1024. T. Frank, Roman Buildings of the Republic. Rome 1924. A. v. Gerkan, Gnomon 3 (1924) 455; Röm. Mitteil. 46 (1931) 153; Gnomon 10 (1934) 455 ss. G. Sâflund, Le mura di Roma repubblicana. Lund 1932. A. Boëthius, Gnomon 8 (1932) 225 ss. Cf. Homo, C. A. H. VIII 563, Altheim, Italien u. Rom II 347.

⁴ Cependant, Vogt, Gnomon 11 (1935) 306, admet l'existence d'une muraille bien qu'il n'y ait pas de possibilité de pousser au-delà de cette vague supposition.

δὲ καὶ αὐτῶν Κορινθίων οἱ πολλοί. Μόμμιος δὲ τὸ μὲν παραυτίκα, ἀναπεπταμένων ὅμως τῶν πυλῶν, ἐπεῖχεν εἰς τὴν Κόρινθον παρελθεῖν, ὑποκαθῆσθαι τινὰ ἐντὸς τοῦ τείχους ὑποπτεύων ἐνέδραν. τρίτῃ δὲ ἡμέρᾳ μετὰ τὴν μάχην ἤρει τε κατὰ κράτος καὶ ἔκκαie Κόρινθον. Et maintenant pour mieux comparer ces récits du point de vue linguistique voici les versions de Diodore, XI 115: οἱ γὰρ Κελτοὶ τὴν μὲν πρώτην ἡμέραν ... τὰς δὲ δύο παρὰ τὴν πόλιν στρατοπεδεύοντες, καὶ τὰ μὲν τείχη θεωροῦντες ἔρημα ... ὑπελάμβανον ἐνεδρεύειν ἑαυτοῖς τοὺς Ῥωμαίους. τῇ τετάρτῃ δ' ἡμέρᾳ γνόντες τὴν ἀλήθειαν τὰς τε πύλας, ἐξέκοψαν. et de Plutarque, Camillus 22: τρίτῃ δ' ἀπὸ τῆς μάχης ἡμέρᾳ παρῆν ὁ Βρέννος ... καὶ τὰς τε πύλας εὐρὼν ἀνεωγμένας, καὶ τὰ τείχη φυλάκων ἔρημα, πρῶτον μὲν ἔδεισεν ἐνέδραν καὶ δόλον... ἐπεὶ δ' ἔγνω τὸ ἀληθές ... εἴλε τὴν Ῥώμην. Dans toutes ces relations les points capitaux sont les mêmes, c'est-à-dire l'intervalle séparant le moment de la bataille et celui de l'occupation de la ville, les portes ouvertes, la peur d'un guet-apens.

L'accumulation d'un tel nombre de détails identiques ne nous paraît pas fortuite. Sans aucun doute, la prise de Rome a été copiée sur le siège de Corinthe, ce qui nous met en état de fixer chronologiquement sa formation et son transfert. Tout nous porte à croire que ce sont les annalistes de l'époque des Gracques, sinon de Sylla, qui ont effectué cette opération en pourvoyant de cette façon l'histoire de l'invasion celtique d'un de ses épisodes les plus dramatiques.

Les récits des annalistes ayant trouvé, en grande partie au moins, une explication raisonnable, il nous reste à nous demander quel était le vrai cours de cet événement et si sa reconstitution est possible. Pour répondre à cette question il faut revenir à Polybe. Il est vrai que la contradiction de ses récits est gênante, néanmoins il faudrait tâcher d'en trouver une interprétation vraisemblable. De ses deux informations la moins possible nous semble être celle du livre II 18. Il est difficile d'admettre que Polybe ait déjà subi – lui aussi – l'influence de la tradition annalistique. Dans ce cas il faudrait supposer une rédaction postérieure de son oeuvre et l'introduction de tout ce passage dans le texte¹. Formellement ce procédé n'est pas exclu, mais il semble un peu hardi. Peut-être l'explication de ce terme *τρισὶ ἡμέραις* joint aux mots *ἐπόμενοι τοῖς φεύγουσι* doit-elle être cherchée dans la distance de trois jours séparant Clusium de Rome, d'après les données de Polybe lui-même. En somme, la tradition antique ayant trait à toute cette question est tellement embrouillée qu'elle nous trompe parfois.

Et quant au vrai cours de cet événement la tradition de Polybe, II 22, d'après laquelle Rome a été prise aussitôt après la bataille, nous semble pré-

¹ D'après R. Laqueur, Polybios, Leipzig 1912, 263 ss., Polybe aurait effectué cinq rédactions successives de son oeuvre, mais cette hypothèse difficile à vérifier n'a pas trouvé l'approbation de la critique. Cf. Fr. Leo, *Gesch. d. röm. Literatur* I. Berlin 1913, 326, rem. 1.

férable à toute autre, tous les détails destinés à combler l'espace de trois jours étant l'oeuvre soit d'un raisonnement facile appuyé sur l'analogie, soit de l'invention, soit de la contamination avec le récit du siège de Corinthe. On a déjà suggéré que dans la tradition romaine se sont conservées les traces d'une soudaine occupation de la ville par les Celtes¹ qui après avoir pénétré à l'intérieur de Rome restée sans défenseurs, auraient tué les habitants surpris dans leurs demeures. Une telle reconstitution semble plus conciliable avec la vraisemblance historique, mais ce point de repère est assez faible.

En tout cas, si nous avons le choix entre les deux rédactions de la prise de Rome par les Celtes, cette dernière paraît infiniment plus probable que l'autre. Pour la rendre encore plus vraisemblable nous pouvons citer une phrase de Tite-Live, V 38,10, méconnue jusqu'ici à cet égard: *ab dextro cornu... Romam omnes petiere et ne clausis quidem portis urbis in arcem confugerunt*. Et s'il n'était pas abusif d'employer la tradition de Tite-Live si remaniée et falsifiée, on pourrait déduire de ce passage que les Celtes ont pénétré aussitôt après la bataille dans la ville ne laissant aux fuyards que le temps de s'enfermer au Capitole. Cette reconstitution des faits pourrait trouver appui dans l'expression de Polybe, I 6, que Rome avait été prise par les Celtes *κατὰ κράτος*. En tout cas nous sommes autorisés à admettre que les récits de Diodore et du reste de la tradition annalistique concernant la prise de Rome sont pour la plus grande partie à rejeter.

Il nous reste à traiter encore une opinion récente, mettant en doute l'assertion de Polybe suivie de toute la tradition annalistique, pour prétendre que les Celtes ont occupé non seulement la ville mais aussi sa citadelle, le Capitole². On sait très bien que nos sources ne cessent de répéter depuis Polybe que le Capitole, siège de Jupiter Maximus, n'a pas été touché par les envahisseurs. Cette croyance fut pour les Romains, émus par la grandeur de leur catastrophe, l'origine de leur redressement futur et la vigilance des oies de Junon qui avait permis de repousser les Celtes a grandi à la dimension d'un symbole religieux. Pour ébranler la foi dans la validité des sources unanimes sur cette question il faudrait citer des témoignages qui répondraient en tous points aux exigences de la critique³.

Cependant ce que Skutsch a su citer pour appuyer son hypothèse, à savoir trois passages des *Punica* de Silius Italicus (I 525 ss., IV 150 ss., VI 555 ss.) et avant tout un fragment d'Ennius (164 Vahlen) ne semble pas avoir assez de force pour nous induire à changer l'opinion fondée sur les témoignages des sources historiques à proprement parler. Et si nous examinons ces trois passages de

¹ Telle est l'opinion d'E. Pais, *Storia di Roma* I 2, 84.

² Cf. O. Skutsch, *The Fall of the Capitol*. *Journ. Roman Studies* 43 (1953) 77-8.

³ Varro, de *vita populi Romani* II = Nonius p. 340. On a suggéré que cette phrase est mutilée et qu'il faut combler la lacune entre „Roma et Capitolium“ par l'interpolation d'un „nisi“. Cf. Thouret, l.c. 111, rem. 54.

Silius nous les trouvons déjà viciés par des éléments tardifs. Il s'agit d'abord du rôle de Camille présenté comme héros de la lutte contre les Celtes, ensuite des Sénons comme conquérants de Rome.

On a déjà souligné que ces éléments appartiennent à une phase tardive de l'annalistique dont la formation n'est attestée qu'à l'époque de Sylla, des Gracques au plus tôt. Cet aspect tardif de la tradition de Silius Italicus n'augmente pas, à coup sûr, notre foi dans l'historicité de son récit. Et à vrai dire tout le fondement de l'hypothèse de Skutsch dépend uniquement de la valeur que nous sommes en état d'attribuer à ce poète dont les sources sont difficiles à déterminer¹. Quant au fragment d'Ennius qui, naturellement, serait à traiter d'une autre manière, la critique² n'a pas pu dégager le sens non équivoque qui suffirait à mettre en doute les constatations de tous les écrivains romains. N'oublions pas qu'Ennius et Silius sont des poètes ayant licence d'exprimer librement leurs pensées, ce qui nous invite à ne pas les serrer de près. Somme toute, il ne nous semble pas possible de nous prononcer en faveur de l'hypothèse de Skutsch et de substituer au fait bien attesté et se laissant logiquement déduire du cours postérieur des événements, une hypothèse faiblement fondée du point de vue de la critique et de la vraisemblance historique.

Mais pour l'éliminer comme non historique, nous aurions besoin d'un témoignage direct qui démontrerait sans ambiguïté où est la vérité. Nous le trouvons chez Théopompe, auteur grec presque contemporain des événements qui constituent notre sujet, dans un fragment cité par Pline (N. H. III 9, 57) dont voici le contenu: *Theopompus, ante quem nemo mentionem habuit, urbem dumtaxat a Gallis captam dicit, Clitarchus ab eo proximus legationem tantum ad Alexandrum missam*. Le vrai sens de ce fragment et son interprétation convenable ne peuvent être dégagés que par une stricte évaluation de ses deux parties, à savoir et du fragment de Théopompe et de celui de Clitarque. De la comparaison de ces deux phrases on peut déduire que Pline a employé „*dumtaxat*“ comme appartenant au substantif précédent et non au suivant, fait démontré par l'emploi de la conjonction „*tantum*“ dans le fragment de Clitarque³. Or, d'après Théopompe, et rien ne nous autorise à supposer que Pline a changé le sens de son récit, les Celtes n'ont occupé que la ville. Le témoignage de Théopompe nous interdit de supposer que les Celtes ont pu aussi prendre la citadelle, élément distinct de la cité, comme le soulignent les sources littéraires tant romaines que grecques⁴.

¹ La preuve la plus significative du manque de véracité de Silius est l'histoire d'Hannibal et de sa femme Imilco, forgée comme l'a démontré R. T. Bruère, Silius Italicus Punica. Classical Philology 47 (1952) 219 ss., d'après des éléments divers empruntés à Curtius Rufus, Lucain et d'autres.

² Voir la discussion sur tout ce problème chez Norden, Ennius u. Vergilius, 102 ss.

³ Cf. Thesaurus linguae latinae s. v. *dumtaxat*.

⁴ Cf. par ex. Livius passim.

Appuyé sur le témoignage de Théopompe qui a sur cette question une valeur inestimable et convaincu qu'Ennius ne peut pas nécessairement être cité en faveur des vers de Silius nous sommes en droit de rejeter l'hypothèse mal fondée de Skutsch tant au point de vue de la critique que de la vraisemblance historique.

Ainsi nous avons épuisé la liste des problèmes particulièrement importants qui puissent nous aider à éclaircir l'état de notre tradition relative à la prise de Rome par les Celtes. Il en résulterait que même Polybe n'est pas libre de doublets, d'emprunts, de contradictions, ce qui rend pénible la tâche de reconstituer la plus ancienne tradition romaine concernant l'invasion celtique. Celle-ci fut évidemment déjà au III^{ème} siècle l'objet d'un travail conscient dont les motifs peuvent être pour la plupart de caractère politique et dont le mécanisme n'est pas toujours clair pour nous. Laissant au chapitre suivant la tâche de développer nos investigations à cet égard rassemblons tout ce que nous pouvons dire de la plus ancienne tradition romaine sur le sujet qui nous occupe. Peut-être se résumerait-elle dans une courte phrase: *Celtae Romanis ad Alliam fugatis urbem praeter Capitolium ceperunt accepto praemio ab obsidione discesserunt*. Tous les autres détails de la prise de Rome semblent avoir été ajoutés dans des circonstances diverses sous l'influence de causes différentes à travers les siècles suivants jusqu'à leur fixation définitive au temps des Gracques et de Sylla.

Mais dès maintenant nous sommes en état de tirer quelques conclusions qui en grande partie confirment les suppositions exprimées surtout à propos de Diodore¹. De l'analyse détaillée de la relation de Polybe et de sa confrontation avec les récits correspondants de Diodore et de Tite-Live on est autorisé à conclure que seul Polybe mérite d'être censé se rapprocher de la vérité. Le reste de la tradition, Diodore y compris, est séparé de notre source principale par une césure nette qui peut-être ne se laisse pas définir chronologiquement, mais d'autant mieux du point de vue des changements profonds et bien visibles subis par la tradition annalistique.

III. FORMATION DE L'ANNALISTIQUE RELATIVE À LA PRISE DE ROME

Vu de la richesse de la tradition romaine se rapportant à ce sujet et conservée dans les oeuvres de Diodore, Tite-Live, Plutarque et tant d'autres auteurs, on doit se poser une question d'importance capitale pour tout le problème, à savoir ce que nous devons retenir de cet amas de détails dans

¹ Pour accentuer encore plus l'image, citons la question de l'armée romaine à l'Allia qui d'après Diodore XIV 114 devait compter 24 000 hommes lourdement armés, c'est à dire deux armées consulaires de deux légions chacune. Mais on sait qu'un tel effectif n'était pas encore en usage en ces temps là et ne fut introduit qu'au cours de la deuxième guerre samnite. Cf. Meyer, *Kl. Schriften* II 316.

lesquels se laissent parfois percevoir les tendances dont ces historiens sont imbus. Grâce à une série de travaux déjà cités nous sommes maintenant incomparablement mieux préparés à donner la réponse à cette question, bien qu'il soit prématuré de juger qu'il n'y a plus de problèmes à résoudre. L'analyse de Burck¹ de la tradition livienne concernant l'histoire du décemvirat montre bien à quels remaniements elle a été exposée au cours des siècles. Il serait bien facile d'appliquer son procédé à la tradition relative à la prise de Rome par les Celtes, surtout après avoir dégagé le fond essentiel de la relation de Polybe. Cette analyse a confirmé la thèse de l'accroissement des couches successives de la tradition primordiale, de son enrichissement par les noms des personnes agissantes, etc.².

Grâce à Stübler³ le mécanisme des changements apportés à ce tronc primitif par Tite-Live a été bien mis en relief. Nous savons maintenant que les annalistes romains, en dernière instance Tite-Live, ont subordonné bien des fois la trame historique aux exigences posées par les idées directrices de leurs oeuvres. Quand nous nous référons à notre problème, nous trouvons chez Diodore la croyance en la „*tyche, fortuna*“, sous le poids de laquelle les Romains ont succombé à l'occasion de leur premier contact avec les Celtes. Tite-Live a remanié cet apport hellénistique aux moyens d'éléments purement romains. Il est vrai qu'il ne niait pas le rôle de la „*fortuna*“ mais il l'a subordonnée à une puissance chère aux Romains, à savoir „*religio*“. Etant donné le caractère, semble-t-il personnel, de son aperçu de l'histoire, il a promu au premier plan M. Furius Camillus qui après Romulus et avant Scipion et surtout Auguste personnifiait la „*virtus romana*“, à l'aide de laquelle la nation élue pour dominer le monde a pu atteindre son but.

Mais à côté de ces tendances très nettes dont l'influence se laisse partout sentir dans les récits de l'invasion celtique, il y en a bien d'autres qui rendent plus difficile la tâche de pénétrer à fond le mécanisme dont se servirent les annalistes de l'époque tardive. On a déjà observé que les récits concernant l'histoire des deux premiers siècles de la république reflètent les combats des partis de la fin de la république, quand les „populaires“ et les „optimates“ aux prises avec eux-mêmes ont projeté leur programme et leurs idées dans le passé⁴. Le héros de l'invasion celtique Camille, doué de traits empruntés au leader du parti aristocratique Sylla, est l'exemple le plus marquant de cette tendance, et son rôle dans l'affaire de Véies qui touche le transfert de la capitale de l'Etat romain, rempart des patriciens, à Véies démocratique, ne fait que l'accentuer⁵. On peut certainement discerner d'autres tendances, par exemple celle

¹ Livius als augusteischer Historiker 449 ss.

² Voir à ce sujet les remarques de Hoffmann, Hermes Einzelschrift. II, III.

³ Die Religiosität d. Livius, passim.

⁴ Cf. Rosenberg, Einleitung etc. 140 s., dernièrement Fr. Klingner, Livius. Die Antike I (1925) 89.

⁵ Voir à ce sujet les remarques de Täubler, Klio 12, 219 ss.

qui présente Rome comme tutrice des peuples italiques menacés par les Celtes, trait emprunté à l'époque de la grande guerre contre les Celtes à la fin du III^e siècle, aussi bien qu'une autre présentant l'invasion du territoire romain par les Celtes comme un acte de vengeance pour des délits commis envers eux par les espions ou les ambassadeurs romains¹.

Ces tendances, cependant, bien que très utiles et susceptibles de nous donner une idée satisfaisante de l'atmosphère générale dans laquelle ont été créées les oeuvres des annalistes, n'affectent pas le fond matériel de la tradition. En un mot il s'agit ici de dire d'où les annalistes ont puisé cet amas de détails qui augmente à mesure que l'on s'éloigne de l'événement. On ne peut pas, vu la complexité du problème, s'attendre à une réponse uniforme. Le matériel provenait sans aucun doute de sources diverses et dans le chapitre précédent on en a déjà indiqué quelques-unes. Pour les classer en certaines catégories il faut en premier lieu discerner les épisodes épars qui à l'origine n'ont aucun rapport avec la prise de Rome par les Celtes. Il n'est pas du tout difficile de dresser une telle liste. Quelquefois les écrivains romains eux-mêmes nous aident à découvrir le véritable état de choses. Citons le fameux passage de Varron, Men. 494. Tandis que chez lui nous ne trouvons que la phrase : *de ponte cernales arripiunt, in Tiberim deturbant*, sans l'indication des circonstances ou bien l'explication de cette phrase énigmatique, chez Festus 334a 16 nous la trouvons liée à l'invasion celtique et douée d'un sens étymologique. L'affaire de Lucaria, de Poplifugia, d'Aius Locutius, de Doliola, et de tant d'autres nous semble être de la même catégorie. Aucun événement de l'histoire romaine ne possédait pour les annalistes qui avaient élaboré l'histoire de leur pays une force d'attraction comparable à celle de l'invasion celtique.

Ici il faut s'arrêter sur deux cas particulièrement intéressants. A vrai dire c'est Mommsen² qui déjà depuis bien longtemps a dégagé le véritable sens de la célèbre histoire de Manlius Capitolinus, personnage qui d'après Täubler personifiait Marius, leader démocratique, adversaire de Sylla, personnifié lui-même en Camille. Cette histoire n'avait au commencement rien de commun avec l'épisode célèbre des oies sacrées de Junon lequel de son côté n'appartenait pas originairement au cycle „celtique“³ et qui n'y a été joint qu'après coup comme mythe étymologique. Mais ce qui, à mes yeux, a échappé à Stübler, c'est la vraie signification de l'introduction des oies, véritables sauveurs du Capitole et de Rome. L'explication de leur mise en scène ainsi que l'invention du jonc (*lituus*) de Romulus, trouvé intact sous les cendres du Palatin, doit être cherchée dans le domaine strictement religieux⁴. De même que Junon par sa volonté s'était laissé transporter de Véies à Rome pour marquer sa complaisance

¹ Cf. Thouret, Über den gall. Brand, 105 s.

² Röm. Forsch. II 153 ss.

³ Cf. Schwegler, Röm. Gesch. III 257, rem. 3; Pais, Storia critica I 2, 56.

⁴ Cf. Stübler, Relig. d. Livius, 91.

envers son nouveau lieu de culte, et la mise sous sa tutelle de celui-ci, de même elle avait manifesté par les cris des oies sa promesse de veiller toujours sur la ville des Romains. Il est significatif que nous trouvons cette scène non seulement chez Tite-Live, mais déjà sous une forme parfaite chez Diodore, ce qui nous fait supposer que la juxtaposition en elle de divers éléments ainsi que sa subordination à la conception religieuse étaient déjà réalisées avant le commencement du I^{er} siècle ou un peu plus tôt¹. Il convient d'ajouter que la découverte du „*lituus*“, scène empruntée, du reste, à l'histoire de l'olivier trouvé sous les cendres de l'Acropole après le départ des Perses, a le même sens.

A la même catégorie de phénomènes témoignant de la protection des dieux due à la „*virtus*“ et à la „*pietas*“ des Romains, appartient, à nos yeux, la question de l'intervalle de trois jours séparant la bataille de l'Allia de la prise de Rome, incompréhensible du point de vue de la vraisemblance historique. Ces trois jours ne représentaient-ils pas un délai nécessaire concédé par les dieux pour sauver la ville destinée un jour à dominer le monde? Souvenons-nous de la même situation décrite par Tite-Live dans un fameux passage (XXII 51,4) à l'occasion de la défaite des Romains à Cannes, événement non moins tragique que la prise de Rome². Cette phrase: *Non omnia nimirum eidem di dedere. vincere scis, Hannibal, victoria uti nescis. mora eius diei satis creditur saluti fuisse urbi atque imperio*, ne nous rappelle-t-elle pas le récit, chez le même auteur, de la prise de Rome par les Celtes. Dans les deux cas cette „*mora*“ des ennemis a sauvé Rome de la chute définitive: la victoire finale a échappé des mains et d'Hannibal et des Celtes. Conçu de telle manière le retard des Celtes sous les murailles de Rome, si elles existaient, naturellement, n'a rien d'extraordinaire du point de vue des écrivains romains influencés par leur profond esprit religieux. Et dans ce cas le modèle emprunté au siège de Corinthe n'a qu'une valeur secondaire, les annalistes ayant cherché à mettre au premier plan l'essentiel, la délivrance de la ville, et non à souligner les détails calqués sans scrupules sur un événement postérieur de tant d'années.

Mais ce travail de juxtaposition bien que profitable n'a pas pu fournir assez de matériel pour expliquer ce gonflement de la tradition annalistique. Depuis Niebuhr³ on a attiré l'attention sur les emprunts évidents à l'historiographie grecque qui quelquefois ont permis aux annalistes de pourvoir aux lacunes de la tradition romaine. Cependant, dans notre cas le profit est assez maigre. Le nom de Brennus, peut-être la peste sévissant parmi les Celtes pendant la chaleur estivale de Rome, l'incendie de la ville, l'assaut du Capitole, peut-être la „*devotio*“ des sénateurs, c'est tout ce que nous pouvons rapporter dans les récits

¹ Le silence de Polybe est dans cette datation l'élément le plus décisif.

² Cf. Stübler, l.c. 121.

³ A comparer E. Zarncke, Der Einfluß der griech. Litteratur auf die Entwicklung der röm. Prosa. Comment. Ribbeck. Lipsiae 1888, 267 ss.

de l'invasion celtique aux événements de l'histoire grecque, surtout aux guerres médiques. Pour un récit qui pullule de détails ce n'est pas grand'chose.

Les annalistes, nous l'avons vu plus haut, se servaient au plus haut degré des modèles tirés de leur propre histoire. On pourrait se demander quels étaient les motifs qui les ont induits à se servir d'éléments de l'histoire romaine. Peut-être était-ce l'influence de Caton „romanisant“ en face des autres écrivains „hellénisants“¹. Cependant, on admettra plutôt qu'ils étaient à court de faits pour élaborer l'histoire de leur patrie sous une nouvelle forme.

Ici nous pouvons dresser une liste plus longue que tout à l'heure. A côté des épisodes sciemment joints à l'invasion celtique, nous avons à citer des emprunts à l'histoire romaine depuis le III^e siècle. C'est surtout une longue série de doublets adroitement cousus dans la trame de la narration pour en faire une unité compacte. On a déjà cité l'épisode des Vénètes de la grande guerre celto-romaine de l'an 225², le siège de Clusium et le rôle des Sénons de l'an 284, l'affaire du tribun Caedicius forgée d'après la situation identique de la II^e guerre punique³, le siège de Corinthe de l'an 146, le motif de la „*mora*“ tiré de la situation au lendemain de la bataille de Cannes, peut-être la *devotio* de Gn. Octavius de l'an 87, la marche des Celtes par l'Etrurie et leur attitude conciliante envers les habitants terrifiés, qui est peut-être l'imitation d'une action commune des Celtes et des Étrusques du commencement du III^e siècle⁴. Cette liste déjà longue, serait aisément doublée, si nous y ajoutions tous les détails et les personnes intervenant dans l'épisode de Camille, où, cependant, on peut discerner quelques emprunts à l'historiographie grecque, par exemple le motif achilléen, étouffé par la grande majorité des imitations romaines⁵.

Cette analyse, qui naturellement se laisserait approfondir sans difficulté, nous permet de dépeindre facilement le fond matériel de la narration des annalistes. Mais tout ce problème ne se présenterait pas sous un aspect complet si nous n'entreprenions l'essai de pénétrer un pas plus loin pour tâcher d'éclaircir le mécanisme de ce travail pseudo-scientifique qui, à la lumière des preuves accumulées plus-haut, formait la tâche principale des annalistes tardifs. Si l'on regarde de près ce bâtiment bariolé de cailloux de provenances diverses que l'on se plaît à nommer l'annalistique romaine, on a l'impression d'un schéma, d'un plan élaboré d'après des principes quelconques. L'invention pure,

¹ Cf. Klingner, Cato Censorius etc. Die Antike 10 (1934) 257 ss.

² L'exemple le plus instructif du rôle que la tradition de Fabius Pictor relative à la guerre de l'an 225-2 a joué dans l'embellissement de l'invasion celtique de l'an 386 est la soi-disant réforme militaire de Camille (Plut. Cam. 40), pourvue de traits empruntés à la bataille sur le Pô de l'an 223 (Polyb. II 33). Cf. Meyer, Kl. Schriften II 261, rem. 1.

³ Cf. Schwegler, Röm. Gesch. III 257, rem. 3; Pais, Storia critica I 2, 55.

⁴ Et non l'attitude d'Hannibal envers les Italiotes comme le supposait Hirschfeld, Kl. Schriften 271.

⁵ Cf. Täubler, Klio 12, 21 ss.

le procédé fantaisiste n'y aurait pas laissé beaucoup de traces, si nous nous bornions à notre exemple.

Et à vrai dire les théoriciens romains nous donnent la clef du jugement que nous devons porter sur ces annalistes. Le premier et le plus important, parce que le plus proche du temps de leur activité, Cicéron, spécifie clairement ce qu'il pense d'eux, en répétant bien des fois la phrase: *historia est opus oratorium maxime*. Et ensuite: *concessum est rhetoribus ementiri in historiis, ut aliquid dicere possint argutius*. Ce jugement plutôt sévère de Cicéron nous permet de regarder avec les yeux d'un contemporain le procédé employé par les annalistes changés en rhéteurs¹.

Nous voici placés devant une théorie „der Geschichtschreibung“ qui sur le sol romain a pris un aspect tout particulier². Le manque de tradition ou bien sa sobriété pour l'époque la plus ancienne de l'histoire romaine, liés aux nouvelles exigences des maîtres du monde, ont trouvé dans la manière rhétorique le moyen de pourvoir aux besoins d'une situation changée. Il nous semble que ce n'est pas par hasard que précisément la deuxième moitié du II^e siècle a vu paraître le fameux opuscule d'Hermagoras qui a élaboré un système complet, un manuel indispensable de l'histoire conçue à la manière rhétorique. „*Graecia capta*“ a fait à ses vainqueurs un présent assez dangereux qu'ils ont su, avouons-le, utiliser mieux que leurs maîtres. Ayant notamment devant nous cette observation faite déjà plus haut, que les écrivains romains de la fin de la république se servaient d'un schéma sciemment élaboré, on ne nous taxera pas d'imprudance si nous rapportons ce schématisme à des règles inventées par les rhéteurs grecs.

Hermagoras ainsi que bien des rhéteurs grecs avant lui ont fixé comme les différents points d'une enquête une série de questions. C'est seulement en répondant à toutes ces questions que l'auteur du II^e et du I^{er} siècle av.n.è. pouvait être d'accord avec le courant stylistique de son époque. Les exigences étaient dures, si l'on voulait d'après ces modalités reconstruire l'ancienne histoire de la république. Et l'annaliste romain placé devant ce dilemme, ne pouvant pas puiser chez les écrivains comme Fabius Pictor de quoi faire une histoire plus détaillée des premiers siècles de la république, pour plaire au public du reste, et conduit par des motifs de caractère politique ou patriotique, a commencé à inventer. Son invention, cependant, allait dans un sens particulier, elle n'était pas pure, du moins chez les premiers annalistes de ce genre. Ils ont fait un travail de juxtaposition, de redoublement. L'analyse du matériel laissé à notre disposition à propos de la prise de Rome par les Celtes, valable surtout pour cet épisode de l'histoire militaire de Rome, a pu montrer ce double procédé

¹ Cicéron, Brutus 42. Cf. Norden, Die antike Kunstprosa I-II. Leipzig 1898. A consulter Fr. Halbfas, Theorie u. Praxis in der Geschichtsschreibung bei Dionys von Halikarnaß. Diss. Münster 1910.

² A ce propos voir aussi les remarques de Gelzer, Hermes 71 (1936) 277.

des annalistes. Toujours en quête de motifs, tirés parfois de sources aujourd'hui perdues, ce qui nous laisse souvent dans une situation difficile, ils ont conçu cette magnifique image de l'histoire des premiers siècles de la république romaine qui, embellie par un maître du niveau de Tite-Live, nous impressionne toujours comme une oeuvre grandiose.

Wroctaw

J. WOLSKI

CICERO UND MATIUS

Zur Psychologie der revolutionären Situation in Rom

Helmut Berve sexagenario.

Das Briefpaar ad famil. 11, 27f., enthaltend einen Brief Ciceros und die Antwort des Adressaten Matius, nimmt bekanntlich eine Sonderstellung im Ciceronianischen Briefcorpus ein. Inmitten all' der Gelegenheitsäußerungen und den leicht hingeworfenen, den Launen des Augenblicks und den Erfordernissen flüchtiger Situation folgenden Bemerkungen, wie sie den Hauptbestand dieser Sammlung bilden, scheint sich hier eine Auseinandersetzung wesentlicheren Charakters zu vollziehen und über die Zerstreutheit des täglichen Lebens hinaus die Beziehungen zweier Menschen in verdichteter Form sichtbar zu werden. Schon Wieland, der in neuerer Zeit zum ersten Mal die Aufmerksamkeit auf die beiden Briefe gelenkt hat, sah in ihnen deshalb zwei gewichtige Zeugnisse grundsätzlichen menschlichen Verhaltens. Dem politischen Opportunisten Cicero sei hier in Matius eine Persönlichkeit von lauterster, nur seinem moralischen und seelischen Empfinden gehorchenden Gesinnung gegenübergetreten und die Kunststücke geschickten Finassierens, die Cicero in seinem Briefe anwende, seien an dem reinen Feuer von Matius' ehrlicher und ungeschminkter Deutungsweise dahingeschmolzen oder, wie Wieland sich wörtlich ausdrückt, hätten sich in „einen sehr dünnen Nebel aufgelöst“. Allerdings verrät dann doch selbst Wieland so viel politische Welterfahrung, daß er in Erwägung zieht, ob Cicero nicht unter einem anderen Gesetz des Handelns stand als Matius und deshalb nicht Anlaß besteht, bei einem Vergleich der beiden nicht allzu rigoristisch zu verfahren¹. Zu Wielands Deutung hat die Folgezeit im

¹ Wieland, M. Tullius Ciceros sämtl. Briefe, übersetzt und erläutert von C. M. Wieland, VI, Zürich 1818, S. 417f. „Allein der Zeitpunkt, in welchem die Mörder Caesars Schrecken über die Caesarianer verbreiteten, war längst vorbei. Vielmehr hob die monarchische Partei unter Antonius' Schutze ihr Haupt wieder mächtig empor, und Cicero, der nie wagt, wenn er sich nicht den Rücken frei glaubt, findet es nötig, sich gegen den wichtigen Matius in einer Art zu verantworten, die es deutlich zeigt, wie sehr ihm daran gelegen ist, die Freundschaft dieses Hauptcaesarianers nicht zu verscherzen. Sein Brief ist daher ein Meisterstück epistolarischer Redekunst, deren Blendendes freilich durch die Stärke der Wahrheit in Matius' eben so meisterhafter Antwort in einen sehr dünnen Nebel aufgelöst wird. Allein man muß sich hierdurch gleichwohl nicht verführen lassen, den Schatten, worin Matius den Cicero als Mensch zu stellen sucht und wirklich stellt, darum schon ausgemacht für gerecht zu halten. Denn wie Matius als Freund und Privatmann dachte und handelte, konnte Cicero als Staatsmann und als das Haupt der Republikaner unmöglich denken und handeln“.

Grunde wenig hinzugefügt. Die zwei Briefe waren durch ihn zu einem Gegenspiel von politischer und privater Moral geworden und sind es bis auf den heutigen Tag geblieben. Freilich wurde Wielands Urteil, das er doch immerhin mit einiger Behutsamkeit vorgetragen hatte, von seinen Nachfahren eher vergrößert als verfeinert, gab es doch der Cicerofeindschaft des 19. Jahrhunderts eine billige Gelegenheit, sich in ihm eines Beweismittels für Ciceros Unzulänglichkeit zu bedienen und ihm sein angeblich schnödes Verhalten gegenüber Matius ins Wachs zu drücken. Es zeigten sich zwar gewisse Varianten des Urteilstenors,¹ aber für die prinzipielle Einstellung fallen sie eben so wenig ins Gewicht wie gewisse Korrekturen, welche auf dieser Linie angebracht wurden, am eingehendsten von Wilhelm Sternkopf, dem zweifellos der bisher wichtigste Beitrag zum Verständnis des Briefes, zumal was den sachlichen Zusammenhang angeht, zu verdanken ist². Gründlich gebrochen mit der unbefriedigenden Argumentation pro und contra Cicero bzw. Matius hat erst Hellfried Dahmann.

¹ Drumann, Gesch. Roms etc. I², S. 91: „Da er (Cicero) ihn ebenso sehr fürchtete als haßte, so entschuldigte er sich, aber mit den künstlichsten Wendungen“.

B. R. Abeken, Cicero in seinen Briefen, 1835, S. 373: „Cicero, der die Gewogenheit eines solchen Mannes nicht verlieren mochte, schrieb an ihn, sich zu reinigen. In solchen Fällen versagte ihm sein großes Talent, die Gewalt, mit der er die Sprache beherrschte, nicht. Aber wie gemacht, wie kalt erscheint uns Ciceros Brief, wenn wir Matius' Antwort lesen“.

J. H. Schmalz, Über Charakter und Sprache des C. Matius, Commentationes Woelfflinianae 1891, S. 271: „Der Charakter des Matius ist über jeden Tadel erhaben; dies zeigt sich ebenso im öffentlichen Leben wie in seinen privaten Beziehungen.“ . . . Dabei ist er ein Mann im Sinne des alten Cato, und wie dieser sagte *rem tene, verba sequentur*, so gilt ihm *res potior oratione* Ferner scheidet er genau zwischen seinen Pflichten als Bürger und Mensch. . . . Die Freundschaft faßt er viel idealer auf als Cicero. . . .“

C. Bardt, Ausgew. Briefe aus Ciceron. Zeit, Kommentar S. 363: „Cicero hielt, so lange noch nicht sicher war, ob er selbst in Italien bleiben könnte, an sich, aber sobald er darauf rechnen konnte, in Rom seinen Platz im Senat wieder einzunehmen, benutzte er die Gelegenheit, die sich ihm bot, als Trebatius ihm mitteilte, Matius habe sich beklagt, daß er unfreundlich über ihn spräche, um in einem Brief seinem Herzen Luft zu machen, der ebenso durch die gewählteste Höflichkeit der Form wie durch den verletzenden Inhalt eine hervorragende Stelle einnimmt. Nach recht geflissentlicher Betonung der freundschaftlichen Beziehungen zu Matius kommt er auf das zu sprechen, was „man“ ihm jetzt zum Vorwurf mache; durchweg ist die Erörterung so geführt, als würde er nicht müde, ihn gegen scharfe Urteile anderer zu verteidigen, in der Tat ist diese Verteidigung nur eine versteckte Form des Angriffs“. Ähnlich, nur etwas gemildert, in dess. Verf.s Römischen Charakterköpfen 1913, S. 264. Dort über Matius S. 268: „Der Brief des Matius hat in der gesamten Korrespondenz der Zeit schwerlich seinesgleichen: ein edler Mann, der mit seinem Empfinden niemand lästig geworden ist, wehrt sich mit würdevollem Unwillen gegen einen dreisten Eingriff, den man in das Heiligtum seiner Überzeugung zu machen sich unterfangen hat; von rednerischem Pathos ist nichts darin, aber jedes Wort atmet die Wärme einer schlichten und treuen Seele. . . .“

² Wilhelm Sternkopf, Zu Ciceros Briefen, Cicero und Matius, Gymn. Programm Dortmund 1901.

Sein interessanter Aufsatz¹ verlegt den Gegensatz Cicero-Matius von der moralischen auf die geistesgeschichtliche Ebene und hebt damit auf dieser die Antithetik von lediglich moralischer Positivität und Negativität auf. Trotzdem ist Dahlmann nicht hinter Wieland zurückgegangen: seine geistesgeschichtliche Interpretation ist im Grunde eine Variation des Wielandschen Urteils. Wieland hatte den Menschen und Privatmann Matius dem Staatsmann und Politiker Cicero gegenübergestellt. Dahlmann will in dem Briefpaar zwei verschiedene Freundschaftsbegriffe entdecken, einen politischen, den Ciceros, welchen er als „römischen“ apostrophiert, und einen unpolitischen, rein menschlichen in dem Brief des Matius, der deshalb eine „unrömische“, die Auflösung der alten römischen Wertwelt anzeigende Haltung zu erkennen gebe. Die ältere Position Ciceros beruhe auf einem „utilitaristischen Freundschaftsbegriff“, der sich in der gegenseitigen, auf wechselseitiger Leistung beruhenden Verpflichtung der Menschen und in dieser äußerlichen Determinierung seine natürliche Einschränkung in den staatlichen Normen finde. Der, historisch jüngere, Standpunkt des Matius gehe auf eine menschliche Verknüpfung innerlicher Art, die, in absoluter Autonomie bestehend, sich durch kein anderes Gebot, auch nicht das der politischen Ethik, aus dem Feld schlagen lasse. Damit hat nun Dahlmann gewiß die moralisierende Betrachtung des 19. Jahrhunderts weit hinter sich gelassen, aber im Ausgangspunkt hat er sich von ihr nicht getrennt. Die Gegensätzlichkeit der Aspekte bleibt bestehen, nur die Richtung, in der sie weiter entwickelt wird, ist eine andere.

Der folgende Interpretationsvorschlag, der sich vorläufig nur durch den augenscheinlich unbefriedigenden status controversiae rechtfertigen kann, versucht deshalb, von der unserem modernen Gefühl sich so ungezwungen anschmiegenden Prämisse abzusehen, es liege hier eine Berührung zweier verschiedener Sphären, der politischen und der personalen, vor, und beruft sich lieber auf die Erfahrung, daß Politik und Menschlichkeit weder getrennt zu sein brauchen noch es eine echte Instanz gibt, welche der Möglichkeit ihrer inneren Verquickung entgegensteht. Dies natürlich alles an seinem Ort und zu seiner Zeit, aber die römische Republik, auch in ihrem Niedergang, hat ja nun einmal, bis zum Beweis des Gegenteils, noch nicht an der modernen Bewußtseinsdifferenzierung von politischer ratio und menschlicher Sittlichkeit teilgehabt. Die beiden Briefe sind denn auch, einer wie der andere, zwar Privatbriefe, d.h., sie gehören ihrer Zweckbestimmung eindeutig der Privatsphäre an, und trotzdem haben sie vom ersten bis zum letzten Buchstaben mit Politik zu tun, sind prall bis zum Bersten von Politik erfüllt. Gerade auf dieser Verbindung von äußerer politischer Zweckfreiheit und politischer Denkungsart beruht ja ihr Reiz, indem auf diese Weise praktische Probleme und Sachverhalte zu Wort kommen

¹ Hellfried Dahlmann, Cicero und Matius. Über Freundschaft und Staat, N. Jbb. f. Antike und deutsche Bildung 1 (113), 1938, S. 225 ff.

können, ohne auf das Gebiet der politischen Taktik und Berechnung abgedrängt zu werden.

Die pragmatische Einordnung der Briefe kann heute als geklärt gelten¹. Sie wurden nicht lange vor Ciceros Rückkehr nach Rom im August 44 v. Chr. und damit unmittelbar vor seinem Versuch, den Senat zu einem Widerstandszentrum gegen Antonius und hierdurch wieder zur maßgebenden Regierungsinstanz des römischen Staates zu machen, geschrieben. Das Verhältnis der Kräfte lag zwar noch im Dunkel, aber die Unsicherheit der politischen Lage verwehrte doch nicht den Republikanern und Cicero die Aussicht auf eine Festigung des Freistaates. Cicero hatte demnach weder Veranlassung, Matius vor den Kopf zu stoßen noch ihm mit Schmeicheleien zu kommen. Übrigens war Matius keine politische Potenz und schon deshalb erübrigten sich für Cicero irgendwelche opportunistische Rücksichten. Authentische Auskunft auf diese Frage geben aber eigentlich nur die Briefe und deshalb muß sich aus ihnen die maßgebende Antwort ergeben.

Ciceros Absicht, der ja mit seinem Brief den Anstoß zur Erwiderung des Matius gab, ging offensichtlich dahin, eine persönliche Mißstimmung, die sich durch Zuträgereien Dritter in sein Verhältnis zu Matius eingeschlichen hatte, aus dem Wege zu räumen. Sein Brief dient der Verteidigung, um nicht zu sagen der Entschuldigung. Die einzige Frage, die sich für ihn hinsichtlich der Antwort ergeben konnte, ging deshalb dahin, ob ihm der Adressat seine Erklärung abnehmen würde oder nicht. Matius' Bescheid — es empfiehlt sich, diese Feststellung vorwegzunehmen — fiel in dieser Hinsicht recht negativ aus². Die Bedeutung der Auseinandersetzung liegt eben in dieser Differenz. Sie war selbstverständlich schon vorher vorhanden, aber durch die schriftliche Äußerung der beiden Seiten wird sie für uns erst „aktenkundig“. Da weder Cicero noch Matius von einer politisch besonders exponierten Stellung aus sich vernehmen lassen und vielmehr auf einem verhältnismäßig durchschnittlichen Niveau, d. h., durchschnittlich in Bezug auf die oberen Kreise Roms, ihre Kontroverse verhandeln, ist man berechtigt, eine gewisse Typik in der Argumentation zu vermuten, und braucht sich nicht veranlaßt zu sehen, eine einmalige Figuration menschlicher Verhältnisse zugrunde zu legen.

Matius, der treue Anhänger Caesars, hatte weder vor noch nach dessen Tod sich auf die Seite der republikanischen Opposition geschlagen, sondern gab unverhohlen zu verstehen, daß er die Ermordung Caesars für ein politisches Verhängnis hielt. Er befürchtete wie übrigens auch andere Caesarfreunde in

¹ Die Datierung der Briefe geht auf Ruete, *Die Korrespondenz Ciceros in den Jahren 44 und 43*, Diss. Marburg 1883, S. 30 zurück, durch den der frühere Ansatz auf das Frühjahr 44 widerlegt ist. Zu Matius' Persönlichkeit und biographischen Umständen jetzt zusammenfassend F. Münzer, RE 14,2, S. 2206 ff.

² Das ist, allerdings auf der Grundlage der abwertenden Beurteilung Ciceros, schon immer empfunden worden. Einschränkungen lediglich bei Sternkopf, a. O. S. 18 ff. (s. u.).

ihrem Gefolge eine äußere und innere Katastrophe und lehnte alle Schönfärberei über die neu geschaffene Lage ab¹. Schon dies erregte den Anstoß Ciceros, erst recht dann natürlich der Umstand, daß Matius nach den Cicero zuteilgewordenen Informationen sich offen auf die Seite des Antonius stellte — bei einer für uns nicht mehr genau zu bestimmenden Abstimmung soll er offen seine Farbe gezeigt haben — und die Bemühungen des jungen Octavian um die Spiele zur Erinnerung an Caesars Siege unterstützte. Cicero gab seinen Mißmut darüber wahrscheinlich im persönlichen Verkehr mit anderen nicht weniger eindeutig zu erkennen als er dies in den uns erhaltenen Briefen tat. Matius blieb diese Kritik nicht verborgen, und er stellte Cicero durch einen Mittelsmann. Durch einen gemeinsamen Freund, den Juristen Trebatius, ließ er Cicero wissen, daß er sein Betragen ihm gegenüber mißbillige und in ihm eine Verletzung ihrer alten Freundschaft erblicke. Wie diese Zurechtweisung im einzelnen aussah, wird in den Briefen nicht zum Ausdruck gebracht. Man kann nur erraten, daß Matius an die Fairness des Freundes appellierte. Wäre ihm Cicero fremd gewesen, hätte er ebensowenig Anlaß zu einer solchen Beschwerde gehabt, wie Cicero sich zu einer ausdrücklichen Erwiderung veranlaßt gesehen hätte. Cicero ist in seinem Brief bemüht, unter Wahrung seines politischen Standpunktes das Zerwürfnis aus der Welt zu schaffen. Es lag ihm also daran, es nicht zum offenen Bruch kommen zu lassen. Deshalb verfährt er äußerst konziliant und behandelt die Kontroverse auf die denkbar liebenswürdigste Weise. Die Hälfte seines Schreibens gilt der Versicherung ihrer Freundschaft. Durch einen historischen Bericht ihrer persönlichen Beziehungen vergewissert er sich ihres freundschaftlichen Charakters, und zwar, wie es aus Gründen des Taktes gar nicht anders sein konnte, indem er die Freundschaftsbeweise des Matius hervorhebt und daraus stillschweigend die Unmöglichkeit ableitet, bei solch' mannigfachen Zeugnissen treuer Gesinnung sich seinerseits Matius gegenüber illoyal verhalten zu können. Natürlich will Cicero damit nicht sagen, daß seine Freundschaft eine Folge von Matius' Wohltaten sei. Sie reichte ja auch in eine frühere Zeit zurück. Zum Überfluß läßt er sie auch noch ausdrücklich bereits mit dem ersten Tag ihrer Bekanntschaft beginnen, also lange bevor Matius durch seine nahen Beziehungen zu Caesar Gelegenheit hatte, Cicero nützlich zu sein: *dilexi te, quo die cognovi, meque a te diligi iudicavi* (27, 1 f.). Und daß ihr freundschaftliches Verhältnis nicht lediglich im Entgegennehmen und Gewähren von guten Diensten bestand, bedürfte ohnehin keiner Erwähnung, auch wenn Cicero nicht ausdrücklich hervorheben würde, daß sie einen „zweckfreien“ Freundschaftsverkehr unterhalten hätten: *multa praetereo, quae temporibus illis inter nos*

¹ Über Matius' politische Haltung vgl. Münzer a. O. Das Hauptzeugnis Cic. Att. 14, 1, 1, Urteil des Matius: *nihil perditius: explicari rem non posse. Etenim si ille (Caesar) tali ingenio exitum non reperiebat, quis nunc reperiet?* Damit in Übereinstimmung das Urteil des Hirtius, vgl. Cicero Att. 14, 22, 1: *clarissimum virum interfectum, totam rem publicam illius interitu perturbatam.*

familiarissime dicta, scripta, communicata sunt (l. c.), und zum Schluß dieses einleitenden Abschnittes heißt es zudem ganz ausdrücklich, daß außer den sichtbaren Erscheinungen ihrer Freundschaft es noch die inneren („verborgeneren“) Beziehungen gäbe: *nam praeter haec, quae commemoravi, quae testata sunt et industria, habeo multa occultiora, quae vix verbis exsequi possum* (27,6)¹.

Nach solchen Vorbereitungen glaubt sich Cicero genügend gegen Mißverständnisse gewappnet, um das durch die neueste politische Entwicklung strittig gewordene Element ihres Verhältnisses ins Auge zu fassen. Aber ein direkter Vorwurf liegt ihm auch jetzt, zum mindesten der Form nach, fern. Stein des Anstoßes ist die Abstimmung, bei der Matius für ein prononciert procaesianisches Gesetz (vielleicht die *lex de permutatione provinciarum* zu Gunsten des Antonius) seine Stimme abgegeben haben soll. Cicero trägt seine Kritik mit einer geradezu peniblen Vorsicht vor: er habe zuerst gar nicht daran geglaubt; aber wenn er es geglaubt hätte, dann würde er zu Gunsten des Matius mit Rechtfertigungsgründen gerechnet haben, die ihm, Cicero, unbekannt seien. Also ein Hinweis auf die persönliche Gewissensfreiheit des Matius: dem Sinne nach etwa, du wirst und mußt schon selbst wissen, was du tust und wie du es verantworten kannst. Eigentlich hat sich damit Cicero den Weg zu weiteren Auslassungen abgeschnitten. Aber der anschließende Einwand gibt ihn wieder frei: bei deinem öffentlichen Ansehen (*dignitas*) machen sich die Leute über deine inneren Motive Gedanken und infolgedessen ist gar nicht zu verhindern, daß deine Feinde sie sich in einem für dich schädlichen Sinn zurechtlegen und darstellen (*ut nonnulla durius quam a te facta sint proferantur*). Also, hat man den Gedankengang fortzusetzen, bist du doch eine Art Rechenschaft schuldig, und zwar in deinem eigensten Interesse. Doch abermals stoppt hier Cicero, indem er diesen zwangsläufigen Progreß unterdrückt und statt dessen fortfährt: sollte nämlich Matius nicht in der zu erwartenden Weise reagieren (daß er nämlich aus seiner Reserve heraustritt bzw. aufhört, das Gerede der Leute zu ignorieren), dann sei er, Cicero, am Ende mit seiner Weisheit. Er könne dann nur noch gleichsam in Stellvertretung von Matius handeln und ihn von sich aus verteidigen, genau wie nach seiner Überzeugung Matius es im umgekehrten Fall tun würde. Cicero fängt also die sachliche Erörterung an der Stelle, wo sie unvermeidlich sich festfahren muß, durch einen Rückgriff auf die Freundschaft auf. Die Verteidigung selbst kann freilich nur in einem für Cicero vertretbaren Sinn ausfallen. Er müsse also glattwegs den Tatbestand in Abrede stellen. Hier muß Cicero notgedrungen an den Rest Peinlichkeit, der von dem sachlichen Zwiespalt sich beim besten Willen nicht beseitigen läßt, rühren, aber er tut dies auf die leichteste und schonendste Art, indem er den Gedanken auf diesem Punkt nicht ausruhen läßt, sondern ihn gleich mit dem nächsten, weniger verfänglichen Thema verschleift und obendrein durch eine allgemeine

¹ Die Hervorhebung dieses Passus erübrigte sich, hätte nicht auf ihn Dahlmann seine Theorie von dem utilitaristischen Freundschaftsbegriff Ciceros gegründet.

Formulierung die konkrete Bestimmtheit des Gemeinten abblendet: *defensio autem est duplex; alia sunt quae liquido negare soleam, ut de isto suffragio, alia, quae defendam a te pie fieri et humane, ut de curatione ludorum.*

Der andere Stein des Anstoßes sei die Sorge des Matius für die Siegesfeier zu Ehren Caesars. Da werde Cicero sich auf „Pietät“ und „Humanität“ berufen. M. a. W.: Cicero bezieht sich damit auf ein Motiv, von dem er wußte, daß Matius sich mit ihm rechtfertige oder rechtfertigen werde. Abermals hält also Cicero inne, indem er wiederum den Matius von sich aus in Schutz nimmt, und dies Mal unter Zuhilfenahme von dessen eigenen Argumenten, von denen außer Zweifel stand, daß sie Cicero selbst nicht teilte. Der Vorwurf ist also abgebremsst, bevor er überhaupt zum Zuge kommt. Dies tut er nun allerdings im Folgenden (27,8). Aber hier nun, wo das Eisen am heißesten ist, tritt Cicero mit Absicht ganz als Urteilsinstanz zurück. Er läßt Matius selbst die Erkenntnis finden: als wohlunterrichteter Mensch weißt du sehr gut (*te hominem doctissimum non fugit*), daß man, sofern Caesar *rex* war, hinsichtlich deiner Verpflichtung ihm gegenüber, verschiedener Ansicht sein kann und entweder deine Ergebenheit auch für den toten Freund anerkennt, so wie er, Cicero, es tue, oder sich, wie mancherseits, auf den Standpunkt stellt, daß vor dem Leben des Freundes die Freiheit des Vaterlandes den Vorzug hat. Man sieht, vorsichtiger und mit größerem Bestreben, und freilich auch mit größerem Geschick, den anderen nicht zu verletzen, läßt sich wohl kaum verfahren. Nicht nur, daß Cicero dem anderen die Erkenntnis als eigene an die Hand gibt und auch jeden Schein einer Ermahnung vermeidet, Cicero stellt sich zur Umgehung jedes Affronts auch noch sichtbar auf die Seite des Freundes und macht sich seinen Standpunkt zu eigen, jedenfalls dem klaren Wortlaut nach. Daß er in Wirklichkeit nicht so denkt, war für Mit- und Nachwelt kein Geheimnis und weiß infolgedessen hier der Adressat auch nur zu gut, aber er hat das für sich erraten bzw. sich selbst zu sagen. Eine parenthetisch eingeschobene Bemerkung ist der einzige Fingerzeig, den ihm Cicero in dieser Richtung gibt: dem *si Caesar rex fuerit* ist ein flüchtiges *quod mihi quidem videtur* angehängt, aber dem Gedankengang des Briefes nach soll durch die Prämisse, daß Caesar König gewesen ist, kein eindeutiges Präjudiz für die praktischen Konsequenzen gegeben werden und insofern ist der äußeren Logik nach die mit Absicht von Cicero als subjektiv charakterisierte Beurteilung Caesars für die Folgerung ohne Gewicht. Cicero sagt gerade so viel, um psychologisch den Umfang seiner wahren Meinung ahnen zu lassen. Die Aussage selbst hält er von ihr frei.

Das Papier soll diesen Dissens mit keinem Buchstaben verraten und der Empfänger des Briefes verstehen, daß der Schreiber in der Absicht, ihm nicht weh zu tun, sogar sein eigenes Urteil verleugnet. Cicero hat bekanntlich den Begriff der Humanität im europäischen Empfinden heimisch gemacht und eine breite Skala von Nuancen darin sichtbar werden lassen. Die Wendung,

die er hier, begreiflicherweise ohne ausdrückliche Berufung auf sie (sie wäre entsetzlich abgeschmackt gewesen und hätte sie geradezu abgetötet¹), vollzieht, ist eines der eindrucksvollsten Beispiele für ihren ethischen Gehalt. Es ist nicht leicht zu glauben, daß man bisher an dieser sublimen Form menschlichen Taktes — denn nichts anderes ist *humanitas* hier — entweder vorbeigesehen oder sie sogar ganz übel mißdeutet hat.

Cicero unterstreicht dann seine „Taktik“, um sie noch überzeugender zu machen. Seine abschließenden Auslassungen, angeschlossen an die Mitteilung, daß er in mündlichen Gesprächen mit Dritten stets die Partei des Matius ergriffen habe, sollen, von Ciceros wirklichen Standpunkt aus, erklären, warum er Matius so weit entgegenkommen konnte. In Verkürzung auf ihr inneres Motiv gebracht besagen sie nämlich, daß, wenn auch Matius eine vielleicht unangebrachte Loyalität dem toten Caesar entgegenbringe, man nicht zu vergessen hätte, daß er zu seinen Lebzeiten kein extremer Parteigänger gewesen sei und sich vielmehr bemüht habe, das Unheil des Bürgerkriegs zu mildern, wo auch immer er konnte².

Diesen Brief Ciceros als „diplomatisches“ Meisterstück zu bezeichnen, hieße ihn lediglich als dialektische Leistung nehmen und seine gewiß unbestreitbare Kunstfertigkeit an die Stelle seines realen Gehaltes an Wollen und Empfinden rücken. Es würde dabei unsichtbar bleiben, daß ein sehr ernsthaftes Anliegen Cicero die Feder geführt hat. Wie Cicero längst wußte, hatte Matius die Abkehr von Caesar, wie sie andere Caesarianer vollzogen hatten, nicht mitgemacht und war deshalb von ihm durch einen breiten Graben getrennt worden. Eine Vermittlung von Ciceros eigener Position her war gerade damals, so sehr sie früher elastisch gewesen war und den zeitweiligen politischen Konstellationen sich anzupassen bemüht hatte, nicht möglich. Dem lebenden Caesar gegenüber hatte er sich mit taktischen Erwägungen und mit der Aussicht auf eine in seinem Sinne günstige Demaskierung helfen können. Der tote Caesar, über den an den Iden des März der Stab gebrochen war, erlaubte kein dilatorisches Urteil mehr. In früheren trüben Tagen, als ihre politische Ansichten nicht minder auseinandergingen, hatte sich Ciceros Freundschaft mit Matius dadurch erhalten lassen, daß sich beide auf einen Indifferenzpunkt einigten, der für Matius mit der Freundschaft zu Caesar verträglich war und auf der anderen Seite es Cicero ersparte, über die äußeren Konzessionen, die er Caesar machte oder zu machen gezwungen war, hinauszugehen. Das Band, das Matius an Caesar knüpfte, wurde nicht so sehr angezogen, daß es die Verbindung Cicero-Matius

¹ Dagegen kann Cicero am Schluß des Briefes, im Resümee, natürlich sagen: *quibus (scil. litteris) nisi credideris, me omnis officii et humanitatis expertem iudicaris; quo nec mihi gravius quidquam potest esse nec te alienius.*

² *Illā vero duo, quae maxima sunt laudum tuarum, quis aut libentius quam ego commemorat aut saepius? te et non suscipiendi belli civilis gravissimum auctorem fuisse et moderandae victoriae, in quo qui mihi non adsentiretur inveni neminem* (ad fam. II, 27, 8).

zerrissen hätte: *quod enim vehementer mihi utile putabas nec inutile ipsi Caesari, perfecisti* (27, 27). Es steht hier nicht zur Diskussion, daß die tatsächlichen Voraussetzungen für diese trianguläre Beziehung Caesar-Matius-Cicero natürlich in der geschmeidigen Politik Caesars gegeben waren. Von den zunächst Beteiligten Matius und Cicero aus gesehen lag ein gegenseitiges Respektieren des anderen Standpunktes und eine Verständigung auf freundschaftlicher Basis innerhalb des Möglichen vor. Cicero versuchte jetzt unter den neuen Verhältnissen, diese alte Linie durchzuhalten und ergriff deshalb die Initiative zur Beseitigung der Spannung. Er verfuhr dabei auf der Grundlage menschlicher Rücksichtnahme, so wie das Matius ihm gegenüber einst getan hatte, und klammerte daher den sachlichen Kern ihres Zwiespaltes einfach ein. Die Konzessionen, die er diesem Bestreben machte, gingen so weit, daß er seinen eigenen Standpunkt geradezu verleugnete oder doch zumindest nur so beiläufig durchblicken ließ, daß es ihm möglich wurde, die Folgerungen aus ihm abzuschneiden und die Haltung des Matius sich formell zu eigen zu machen.

Dieser Brief Ciceros bedurfte an sich lediglich einer formalen Bestätigung oder der bloßen Versicherung, daß der Adressat nicht so sehr seinen Wortlaut als die dahinter liegende Absicht verstanden hatte. Ciceros Connivenz war auf eine entsprechende des Matius abgestellt. Bemühte sich Cicero, durch eine persönliche Geste die objektiven Schwierigkeiten im Bereich ihres Verhältnisses zum Verschwinden zu bringen, so durfte er daraufhin wenigstens erwarten, daß sich Matius entsprechend verhielt und im Sinn des *quieta non movere* von einer sachlichen Erörterung absah. Eben das tut aber Matius nicht und damit ist seine Stellung zu Ciceros Epistel von vorneherein unmißverständlich angegeben. Nachdem sich Cicero schützend vor Matius gestellt und alle Vorwürfe gegen ihn abgedeckt hatte, schiebt ihn Matius ganz unbekümmert um die Behutsamkeit seines Gesprächspartners bei Seite, um den Schleier, den dieser beflissen über die tatsächliche Problematik ausgebreitet hatte, wegzuziehen. Wahrscheinlich hat die rigoristische Ehrlichkeit, mit der hier Matius vorgeht, nicht unerheblich zu der hohen Schätzung seines Briefes durch die Modernen beigetragen.

Allerdings gibt sich Matius zunächst den Anschein, als ob er das Spiel seines Korrespondenten aufnehme. In dem ersten einleitenden Abschnitt betont er ausdrücklich, daß er Cicero nicht unter seine Ankläger zähle. Ciceros Brief sei ihm vielmehr ein Beweis, daß ihre alten Beziehungen nach wie vor ungestört seien und daß eben deswegen Cicero sich distanziert habe von den gegen ihn erhobenen Vorwürfen. Im Hinblick auf die Verbiegung seiner wahren Überzeugung, die Cicero zu Gunsten des Matius auf sich genommen hatte, mußte es Cicero schwer fallen, in dieser Bemerkung nicht einen Unterton von kalter Ironie zu erspüren. Noch weniger angenehm war die anschließende Bestätigung von Ciceros Freundschaftsargumenten zu lesen. Läßt sich doch Matius recht unverhohlen in dem Sinne vernehmen, daß Ciceros Verhalten eigentlich das

mindeste sei, was er, Matius, nach seinen eigenen Freundschaftsdiensten erwarten dürfe (*praesertim in quem mea propensa et perpetua fuisset atque esset benevolentia*, 28,1)¹. Wenn Cicero sich auf Matius' Freundschaftsbeweise berief, stand das Argument mit den Gesetzen des Taktes nicht nur in Einklang, sondern konnte geradezu als von ihnen inspiriert gelten. Im Munde des Matius bietet der gleiche Tatbestand die umgekehrte Ansicht. Es fällt schwer, davon nicht peinlich berührt zu sein. Das Kompliment, zu dem sich Matius versteht, erscheint also in einem nicht unbedenklichen Zwielficht und ein gewisser Zweifel, ob er es mit ihm ehrlich meine, läßt sich kaum unterdrücken.

Nachdem Matius entschlossen ist, sich offen an die Adresse seiner Gegner zu wenden und gleichsam „auszupacken“, verschwinden für ihn alle die Gesichtspunkte, von denen Cicero sich hatte leiten lassen. Wir erhalten die Dinge von ihm mit all' der Schärfe beleuchtet, die er zu seiner Verteidigung nötig zu haben glaubte². Der sanfte Schein, den Cicero im Interesse der menschlichen Verträglichkeit über sie ausgebreitet hatte, ist gründlich verscheucht. Matius faßt den Stier gleich bei den Hörnern und geht ohne Umschweif auf den Vorwurf ein, daß er die Anhänglichkeit an Caesar wahre, obgleich doch der Freundschaft das Vaterland vorzuziehen sei. Cicero hatte davon nur indirekt, unter absichtlicher Bezugnahme auf die Meinung von anderen, gesprochen. Matius befreit das Urteil von dieser vorsichtigen Neutralisierung und stellt ihm sein klares Gegenargument entgegen: es sei noch gar nicht ausgemacht, ob Caesars Tod dem Staate nützlich gewesen sei. Das ist die auch früher schon von Matius geäußerte Meinung und entspricht seiner Befürchtung, daß aus Caesars Tod sich schlimme Folgen für den römischen Staat ergeben. Im Sinne einer offenen Polemik mußte die Behauptung besonders wirksam sein, denn über die Folgen von Caesars Tod war ja nun tatsächlich noch nicht das letzte Wort gesprochen, und gerade Cicero war bekanntlich der letzte, der sich darüber Illusionen

¹ Auch diese Äußerung des Matius verträgt sich nicht recht mit Dahlmanns Anschauung, Matius habe sich zu einem anderen Freundschaftsbegriff als Cicero bekannt.

² Der Wortlaut dieses zentralen Abschnittes von Matius' Brief (28, 1 f): *respondebo criminibus, quibus tu pro me, ut par erat tua singulari bonitate et amicitia nostra, saepe restitisti. Nota enim mihi sunt quae in me post Caesaris mortem contulerint. Vitio mihi dant, quod mortem hominis necessarii graviter fero atque eum, quem dilexi, perisse indignor. Aiunt enim patriae amicitiam praeponendam esse, proinde ac si iam vicerint obitum eius rei publicae fuisse utilem. Sed non agam astute. Fateor me ad istum gradum sapientiae non pervenisse. Neque enim Caesarem in dissensione civili sum secutus, sed amicum, quamquam re offendebar, tamen non deserui (die Interpunktion von Purser in seiner Ausgabe der Bibl. Ox., welche *amicum* zu *secutus* zieht, ist falsch): neque bellum umquam civile aut etiam causam dissensionis probavi, quam etiam nascentem extinguere sum captus. Itaque in victoria hominis necessarii neque honoris neque pecuniae dulcedine sum captus: quibus praemiis reliqui, minus apud eum quam ego cum possent, immoderate sunt abusi. Atque etiam res familiaris mea lege Caesaris diminuta est, cuius beneficio plerique, qui Caesaris morte laetantur, remanserunt in civitate. Civibus victis ut parceretur aequae ac pro mea salute laboravi.*

gemacht hätte. Was tat dies aber hier zur Sache? Der von Cicero vorsichtig berührte *status controversiae* betraf doch gar nicht dieses Problem, sondern ging um die Frage, wie Cicero ausdrücklich gesagt hatte, ob Caesar Tyrann (*rex*) gewesen sei. Der Effekt von Matius' Einwand beruht also auf einer nicht unerheblichen Problemverschiebung und seine Durchschlagskraft ist einer Gedankenwendung entlehnt, die im Grunde an der Sache vorbeizieht.

Freilich schlägt Matius sein Argument, kaum daß er es vorgetragen, gleich selbst nieder: *sed non agam astute*, womit er im Weitergehen den Gedanken fallen läßt. Natürlich hat er ihn nicht ohne Absicht vorgebracht. Sein kurzes Aufblitzen sollte zeigen, daß er um einen handfesten Beweis, wie er meinte, nicht verlegen wäre. Aber er wünscht nicht, in dieser Hinsicht beim Wort genommen zu werden. Er schießt also einen Pfeil ab, indem er gleich hinterher den Standort wechselt, um nicht selbst von dem gleichen Geschloß getroffen zu werden. Möglicherweise hatte er Ciceros verdeckte Demonstration ähnlich aufgefaßt und will ihm jetzt in der gleichen Münze heimzahlen. Das logische *Saltomortale* nahm er dabei in Kauf, sofern es ihm zum Bewußtsein kam. Das konnte er Cicero nicht abgesehen haben, denn bei ihm war die innere Ordnung gewahrt.

Matius faßt nach dem kurz eingelegten Geplänkel (*proinde ac si iam vicerint obitum eius rei p. utilem fuisse*) nun das Problem vom Zentrum an, gewiß in seiner Vorstellung, aber nicht minder auch nach der Auffassung seiner modernen Interpreten, denn es geht ihm jetzt um die Aufhebung des Gegensatzes von Staat (*patria*) und Freundschaft und die Widerlegung des Satzes *patriam amicitiae anteponendam esse*. In den Augen seiner modernen Bewunderer hat er darin den Anspruch einer politischen Ethik gesehen, welche den Vorrang der politischen Moral vor der privaten verlangt. Seine Weigerung, sich ihm zu fügen, enthalte deshalb die Bestreitung dieses Primates und die Behauptung der Unabhängigkeit der persönlichen von den politischen Beziehungen: *neque enim Caesarem in dissensione civili sum secutus, sed amicum . . . non deservi*.

Hier scheint eine und dazu noch scharfgeschliffene Antithese vorzuliegen und sofern man dem Caesar am Anfang den *amicus* Caesar gegenüberstellt, fügt es sich wohl sehr leicht, daß dem Staatsmann Caesar der Freund Caesar entgegentritt und Matius sich auf diesen beruft, um des anderen sich zu begeben. Damit wäre dann die interpretatorische Weichenstellung erreicht, mit der auf dem einen Gleis der „Politiker“ Caesar, auf dem anderen der „private Freund“ fein säuberlich von einander getrennt ihren Kurs nähmen. Aber diese Deutung ist in Wahrheit irreführend und findet bei genauerem Zusehen im Text nur eine schwache Stütze. Erstens einmal ist die ganze Periode gar nicht auf diesen Gegensatz gestellt, sondern basiert auf dem korrespondierenden *neque neque*. Dieses verbindet zwei Glieder eines einhelligen Gedankens: ich bin Caesar weder bei dem inneren Konflikt gefolgt noch habe ich ihn (wörtlich: den Bürgerkrieg und die Ursache des Zerwürfnisses) gebilligt. Diesem dominie-

renden Gedanken ist nun der mit *sed* beginnende Satz untergeordnet, womit ihm von vorneherein nicht das Gewicht, das man ihm geben möchte, zugestanden wird. Er ist aber nicht nur seiner äußeren Stellung nach, sondern ebenso hinsichtlich seiner inhaltlichen Funktion ungeeignet, einen echten Gegensatz zu dem Hauptsatz *neque enim Caesarem . . . sum secutus* zum Ausdruck zu bringen. Seine Aufgabe ist eine ganz andere: er hat die Behauptung des Hauptsatzes des *non sum secutus*, die ja im Spiegel des historischen Tatbestandes einigermaßen paradox wirkt (denn in Wirklichkeit war doch Matius ein „Gefolgsmann“ Caesars), zu motivieren und näher zu erklären. Damit aber hört der Satz auf, mit dem gleichen Gewicht an die Seite des führenden Gedankengangs zu treten. Er will in erster Linie das *non sum secutus* durch das *non deservi* veranschaulichen und zu diesem Zweck, um nun wiederum dem *non deservi* die nötige Vorstellungskraft zu verleihen, ist als Objekt *amicum* hinzugesetzt. Es handelt sich also hier um eine akzessorische Charakterisierung der Hauptaussage, um eine Ergänzung dessen, was in einem Atemzug nicht in der befriedigenden Vollständigkeit zum Ausdruck gebracht werden konnte.

Sachlich will Matius eine einheitliche Vorstellung bilden aus den Tatsachen, daß er die *dissensio civilis* (innerlich) nicht mitgemacht, überhaupt den Bürgerkrieg mißbilligt hätte und andererseits auf Caesars Seite getreten sei, ihn nicht im Stich gelassen, kurzum bei ihm mitgemacht hätte. Anschließend deutet er dann gleich an, was diese Haltung in concreto bedeutete: wohl Parteigängerschaft Caesars, aber keine Teilnahme an dem revolutionären Raubrittertum und statt dessen ehrliche Bemühung um das Wohl und die Schonung der Unterlegenen. Es sollte sich bei alledem eigentlich erübrigen, nun noch hervorzuheben, daß damit also unmöglich die Konsequenzen einer privaten Freundschaft zu Caesar, welche von der politischen Entwicklung abgesehen und sich auf die intime Sphäre persönlicher Beziehungen beschränkt hätte, gemeint sein kann. Als wenn die Tätigkeit des Matius in diesem Zusammenhang kein *politicum* gewesen wäre und sich aus ihr nicht wichtige Unternehmungen gerade auch im Sinne Caesars ergeben hätten, etwa gleich die Versöhnungsaktion im Verhältnis zu Cicero, deren Ausführung doch nicht unwesentlich in den Händen von Matius lag.

Wenn Matius eine solche Figuration seiner Person in der Caesarischen Politik u. a. mit dem Begriff der „Freundschaft“ in Verbindung brachte, klang dies für römische Ohren ganz unverfänglich, ohne daß im geringsten irgendwelche Assoziationen, die diese „Freundschaft“ auf das Gebiet politisch indifferenter privater Beziehungen verwiesen hätten, ausgelöst worden wären. Selbstverständlich konnte „Freundschaft“ in diesem Sinne auch eine persönliche Seite haben und hat sie in diesem Fall auch offenbar gehabt (*homo necessarius* 28,2, *homo mihi coniunctissimus* 28,5, *homo amicissimus* 28,6), aber keinesfalls beschränkte sie sich hierauf, noch war sie ihr eigentlich wesentlicher Bestandteil.

Matius hatte sich Caesar schon lange vor dem Bürgerkrieg angeschlossen und damit zwangsläufig, ungeachtet aller Modifikationen, die er für seine Person sich vorbehielt, dessen Kurs zu seinem eigenen gemacht. Die aristokratische Struktur der römischen Gesellschaft hatte von jeher Gruppierungen gekannt, die sich an eine Person oder auch eine Familie ankrystallisierten. Erwachsen war die Erscheinung vielleicht aus dem alten Klientelwesen, und sofern Verbindungen dieser Art über den Abstand großer ständischer Unterschiede sich bildeten, sprach man auch noch später, als es nur noch schwache Spuren der frühen, juristisch fixierten Klientelschaft gab, von Klienten. Aber auch im Kreise der oberen Schichten (Matius gehörte dem Ritterstand an) gab es persönliche Zuordnungen dieser Art. An sie hat man wohl in erster Linie bei dem Begriff der „Freundschaft“ zu denken, ganz unabhängig davon, ob sie fallweise, etwa durch Verwendung des Begriffes *fides* an die Klientelschaft erinnerten¹. Da diese soziologischen Beziehungen auf einer gesellschaftlichen Ebene zustandekamen, zu deren unvermeidlichen Ingredienzien die Politik gehörte, war es gar nicht zu umgehen, daß sie einen ausgesprochenen Publizitätscharakter besaßen. Matius' Äußerungen spiegeln diesen Tatbestand unverfälscht wieder. Er denkt nicht daran zu bestreiten, daß seine Beziehungen zu Caesar in diesem Sinn einen öffentlichen, politischen Aspekt besaßen. Im Gegenteil, er beruft sich auf sie förmlich. Aber innerhalb der Politik ist mit seiner Stellung als „Freund“ Caesars freilich ein bestimmter status gemeint, und wenn Matius unter seinen Rechtfertigungsgründen auch seine „bloße“ Freundschaft mit Caesar anführt, dann denkt er an die in diesem status zum Ausdruck kommende besondere Qualität der „Freundschaft“. Was er damit sagen will, ist klar genug: Caesars Entscheidungen waren nicht seine eigenen, und infolgedessen kann ihn auch keine Verantwortung dafür treffen. Matius nahm wohl an der Politik teil, aber sie wurde ihm durch den „Freund“ Caesar vermittelt und war damit seiner selbständigen Beurteilung und Handhabung entzogen. Matius appelliert damit an ein ganz unproblematisches Verständnis, welches sich zwanglos aus der inneren Mechanik der römischen Politik ergab. Dabei unterstellt er ohne Bedenken, daß ein Bruch eines solchen Verhältnisses nicht zumutbar ist. Auch damit hält er sich im Bereich guter römischer Gewohnheit, denn diese Unzumutbarkeit gehörte zu den festen Spielregeln in Rom. Der Verzicht auf sie hätte den Verzicht auf alle Stabilität politischer Kräfteverhältnisse und auf jede Berechenbarkeit politischer Aktionen bedeutet. Es handelt sich also um ein ausgesprochen traditionelles Element der römischen Verhältnisse.

Bemerkenswert ist nun allerdings, daß diese herkömmliche Denkweise auch dann noch ihre Legitimität beanspruchte, als in der römischen Revolutionszeit

¹ Vgl. hierzu die bekannten Ausführungen von M. Gelzer, Die Nobilität der römischen Republik 1912, S. 53, 84, 86. Der politische Freundschaftsbegriff ließe sich wahrscheinlich an Hand des Ciceronianischen Materials in der Richtung einer Art Casuistik der möglichen personalen Relationen noch weiter analysieren.

sowohl die politischen Methoden als besonders die persönlichen Machtmittel und Machtgrößen eine durchgreifende Veränderung erfahren hatten, jene immer rücksichtsloser geworden, diese ins Gigantische angestiegen waren. Wir vermögen heute zu sagen, daß die radikale Veränderung der inneren und äußeren Größenordnung dem gesellschaftlichen und politischen Bau der römischen Republik den Boden unter den Füßen wegzog. Den Zeitgenossen freilich trat dieser Strukturwandel nicht ins Bewußtsein, und sie fuhren bekanntlich fort, die revolutionären Vorgänge der ausgehenden Republik mit den Augen der klassischen zu betrachten. Auch Cicero gehörte zu ihnen und Matius durfte sich in dieser Hinsicht durchaus auf dem gleichen Boden stehend wie sein Korrespondent wissen, wenn er sich auf seine „Freundschaft“ mit Caesar als einen schlechthin durchschlagenden Exkulpationsgrund berief.

Dennoch hatte die verharmlosende Optik, innerhalb der sich Matius bewegt, eine Grenze, auch im Bewußtsein seiner Zeit. Sie war in dem Augenblick erreicht, als Caesar den Bürgerkrieg begann, und überschritten, als er sich als „Tyrann“ entlarvte. Mit jenem war zwar in manchen Augen erst eine Phase der Zweideutigkeit, von der noch nicht völlig abzusehen war, wozu sie sich erklären würde, gekommen, die Wendung Caesars zur Monarchie schuf eine klare Sicht. In jenem Fall war auch Cicero zu Kompromissen bereit (wie er ja schon durch sein eigenes Verhalten im Bürgerkrieg bewiesen hatte), in diesem gab es auch für ihn kein Paktieren mehr. Für die Beurteilung von Matius' Brief kommt deshalb alles darauf an, wie er sich auf dieser Scheidelinie bewegte.

Der Bürgerkrieg, zu dem sich Caesar schließlich, mehr durch die Umstände gezwungen als freiwillig, entschlossen hatte, fand zwar den Haß und den Abscheu seiner Gegner, konnte aber trotzdem die Zuständigkeit der überkommenen gesellschaftlichen Normen nicht aus den Angeln heben. Man hatte zwar die Revolution in der denkbar krassesten Form des *bellum civile*, doch die persönliche Bindung zwischen dem Gegner und seinen Anhängern aufzuheben oder in Frage zu stellen lag außerhalb der Möglichkeiten und auch des Gesichtskreises. Asinius Pollio, in der Unvoreingenommenheit und Nüchternheit seines Urteils gewiß ein unverdächtigster Zeuge, nimmt bezeichnenderweise eben so wenig wie Matius Anstand, seine Parteigängerschaft in dieser harmlosen und traditionellen Weise zu interpretieren. Rückschauend meint er im J. 43 v. Chr., seine Parteinahme für Caesar im Bürgerkrieg entbehre aller Verfänglichkeit. Die Politik habe ihn von Hause aus gar nicht interessiert, aber er habe sich, da er von vielen Feinden bedroht war, irgendwo anschließen müssen, und da habe er diejenige Seite gewählt, welche ihm am meisten Sicherheit verbürgte. Und Caesar habe ihn auch gleich wie einen alten Freund behandelt. Er sei natürlich damit seiner Handlungsfreiheit verlustig gegangen und hätte manches gegen seine Überzeugung tun müssen (ad fam. 10,31). Auch Asinius Pollio rechnete also damit, daß ihm dieses Argument abgenommen würde, und er hat sich gewiß nicht verrechnet.

Freilich beeilt sich nun Pollio zu sagen, er hätte damals gemerkt, wohin die Alleinherrschaft führt und was die Freiheit für einen Wert hat, trifft also eine Unterscheidung zwischen der Situation, in der er sich persönlich befand, und der allgemeinen Lage, die sich ergeben hatte. Damit werden bei ihm die Grenzen zwischen legitimer Ordnung und revolutionärem Umsturz immerhin sichtbar. Matius dagegen ist weit entfernt, seine Augen dafür geöffnet zu halten. Er neigt ausgesprochen dazu, sie umsichtig zu verdecken. Den Spielraum, den ihm sein Ausgangspunkt gewährt, nützt er offenbar nicht aus. Er verharret bei seiner Selbstausslegung auch dann, wenn sie in Gefahr gerät, zur Fiktion zu werden, auch nach dem Empfinden seiner Zeit oder wenigstens eines beträchtlichen Teiles seiner Zeitgenossen.

Matius wird das freilich kaum richtig gemerkt haben. Vielleicht stand er auch unter dem Einfluß der ideologischen Taktik, welche Caesar sich während des Bürgerkrieges aus den traditionellen Begriffen der römischen Innenpolitik zurechtgeschmiedet hatte. Da erscheinen die Mißverhältnisse freilich ins Groteske übersteigert. Nach Caesars einleitender Darstellung im *Bellum Civile* war der Bürgerkrieg bekanntlich nichts anderes als eine Art „Fehde“, d. h. der offene Ausbruch der Feindschaft zwischen ihm und seinen politischen Gegnern, welche ihm seine Reputation (*dignitas*) streitig machten. Daß Caesar diese Inszenierung *bona fide* vornahm, wird dem dämonischen und zynischen Mann kaum jemand glauben. Aber Matius wird man wohl zugestehen, daß er in ehrlicher Einfalt eine solche Retouchierung des Revolutionären für möglich hielt, wenigstens insoweit, als er sich auf den Bürgerkrieg bezieht.

Nun spricht aber Matius nicht nur vom Caesar des Bürgerkriegs, und in der Diskussion, in der er sich stellt, handelt es sich um den am allerwenigsten. Zur Debatte steht ja der Ausgang Caesars, und über Caesar in diesem Zusammenhang war ein Urteil gefällt, das sich vielleicht bestreiten ließ (tatsächlich ist das explicite nie geschehen), über das man aber nicht hinwegsehen konnte. Wenn der Bürgerkrieg noch die Konturen zwischen Ordnung und Revolution verwischte, die Monarchie Caesars schuf klare Grenzen zwischen Legitimität und Ungesetzlichkeit, und wenn dort die Berufung auf herkömmliche Sozialvorstellungen vielleicht noch möglich war, in diesem Umkreis waren sie beseitigt und konnte es nur die Entscheidung für und gegen den Monarchen Caesar geben.

Für Matius ist bezeichnend, daß er sich ängstlich hütete, in diesen Brennpunkt des Problems zu geraten. Dadurch, daß er die unverfängliche Figuration Caesars aus der Zeit vor dem Bürgerkrieg bis in die Gegenwart aufrechterhält, weicht er der Gefahr, zu Caesars revolutionärer Politik Stellung nehmen zu müssen, aus. Seine so biedere Berufung auf den „Freund“ Caesar hat hierin ihren sachlichen Grund. Die Aporie, in die er sich hierdurch verwickelte, wird ihm kaum zu klarem Bewußtsein gekommen sein. Matius hat eine Neigung, an den Dingen vorbeizudenken. Sie war seinem guten Glauben sehr förderlich. Mit ihrer Hilfe verschob er zuerst die Basis für das Urteil über Caesars Tod, indem

er es auf die opportunistische Frage nach dessen Folgen abstellte. Sie setzte ihn sodann in Stand, Caesars Gesamterscheinung mit seinen politischen Beziehungen zu ihm zu vertauschen. Er war in beiden Fällen gewiß subjektiv redlich, aber das Zugeständnis seiner persönlichen Integrität vermag über die Trübung seiner Urteilskraft schwerlich hinwegzutäuschen, vielmehr ist die geschichtliche Aussagekraft seiner Äußerungen gerade in diesem eigenartigen Verhältnis von Vorstellung und Wirklichkeit beschlossen.

Nachdem sich Matius auf diese Weise dem eigentlichen Zugriff seiner Gegner entzogen zu haben glaubte, wird seine Verteidigung bezeichnenderweise zur offensiven Anklage. Der nächste Abschnitt (28,3f.)¹ wendet sich gegen die Zumutung, ihm, Matius, die Trauer um den toten Freund zu verbieten. Der Gedanke bringt im Grundsätzlichen an sich nichts Neues, denn nach der Einordnung, die Matius für Caesar und seinen Tod getroffen hat, kann selbstverständlich ein Ausdruck seiner Anhänglichkeit über den Tod hinaus nicht mehr verfänglich sein. Bezeichnend sind jedoch Art und Weise, wie Matius seinen Standpunkt vertritt. Er wird dabei unverkennbar aggressiv und verrät weit mehr als das Bedürfnis, ungeschoren gelassen zu werden in seinen „privaten“ Gefühlen. Wenn bis jetzt noch verborgen geblieben sein sollte, daß Matius mehr verfißt als den Anspruch auf ein persönliches Reservat, dann läßt er hier erkennen, daß er ein Mann mit politischer Einstellung ist. Und eben so bezeichnend bleibt er seiner Methode, ohne jede Rücksicht auf Sachlogik zu verfahren, treu. Gleich der erste Satz enthält ein sprechendes Beispiel: soll es mir also verwehrt sein, über den Untergang desjenigen ungehalten zu sein, bei dem es möglich war, die Schonung aller Bürger zu erreichen? Die Assoziation der aktiven Schonung Caesars und der passiven, auf die er deshalb Anspruch hat und welche daher Matius' Gefühle motiviert, bedeutet ein ziemlich billiges Verwischen der *quaestio iuris*, dem auch mit der spitzen Bemerkung über die Anhänger Caesars, die seinen Kredit untergruben und dann von ihm abfielen, nicht abgeholfen wird. Daß man das, was einer gewährt hat, ihm selbst nicht vorenthalten darf, ist an sich ein ehrenwertes Argument, aber um die Unantastbarkeit eines Revolutionssiegers zu beweisen, dazu taugt es nicht. Man sieht, wie wichtig es für Matius war, im Vorausgehenden den ganzen revolutionären Aspekt Caesars einzuklammern.

¹ Possum igitur, qui omnes voluerim incolumes, eum, a quo id impetratum est, perisse non indignari? cum praesertim iidem homines illi et invidiae et exitio fuerint? plecteris ergo, inquit, quoniam factum nostrum improbare audes. O superbiam inauditam, alios in facinore gloriarı, aliis ne dolere quidem impunitę licere! At haec etiam servis semper libera fuerunt, timerent, gauderent, dolerent suo potius quam alterius arbitrio: quae nunc, ut quidem isti dictitant libertatis auctores, metu nobis extorquere conantur. Sed nihil agunt. Nullius umquam periculi terroribus ab officio aut ab humanitate desciscam: numquam enim honestam mortem fugiendam, saepe etiam oppetendam putavi. Sed quid mihi suscensent, si id opto, ut poeniteat eos sui facti? Cupio enim Caesaris mortem omnibus esse acerbam.

Matius ist ein Freund formaler Beziehungen und Antithesen, weil sie sich gut dazu eignen, das wirkliche Verhältnis der Dinge zueinander zu verhüllen. Der nächste, schon recht massiv vorgetragene Angriff, daß ein Sklave mehr Freiheit hat als einem die wiedergewonnene „Freiheit“ nach Caesars Tod verbürgt, ist dafür ebenso kennzeichnend. Hier löst Matius einen sehr konkreten und eindeutigen Freiheitsbegriff (Freiheit als Negation der Tyrannis) in einen allgemeinen und diffusen auf, indem er offenbar verlangt, daß jener auch seine eigene moralische Verurteilung und damit in der praktischen Konsequenz auch seine Beseitigung in sich schließt. Die Gegenüberstellung des *terror periculi* in der befreiten Republik und Matius' Pietätspflicht gegenüber Caesar (*officium aut humanitas*) ist hiervon abhängig und verliert ebenso dadurch das Gewicht einer selbständigen Instanz als sie sich aus der grundsätzlichen Voraussetzung, welche keinen „Tyrannen“ Caesar kennt, ergibt.

Matius hat dies bis jetzt nur sehr verdeckt zum Ausdruck gebracht. Er lüftet aber jetzt den Schleier und tut die offenste Äußerung des ganzen Briefes: ich wünsche, daß die anderen ihre Tat bereuen und der Tod Caesars von allen als Bitternis empfunden wird. Wir müssen Matius für diese Bemerkung dankbar sein, denn mit ihr verscheucht er all' die Nebel von einer nur für ihn persönlich gültigen und der Politik gegenüber ein eigenes Recht beanspruchenden Pietätsbeziehung.

Danach ist nicht mehr schwer zu erkennen, was es mit der Ausdeutung seiner Unterstützung von Octavians Spielen zu Ehren Caesars im übernächsten Abschnitt (28,6f.) auf sich hat.¹ Hier tritt zwar Matius dem Leser mit dem markanten Satz entgegen: *At id ad privatum officium, non ad statum rei publicae pertinet*, und ist also der dokumentarische Beweis geliefert, daß es Matius nur um eine rein persönliche Verpflichtung geht und er sich von einer Empfindung leiten läßt, die meilenweit von jeder politischen Bestimmung ab liegt. Aber man darf sich durch den Wortlaut über die Sache selbst nicht täuschen lassen. Auch an dieser Stelle bietet Matius nur einen besonderen Reflex seines Verhältnisses zu Caesar. Dieses hat gewiß auch seine im engeren Sinn persönliche Seite und erlaubt deshalb durchaus, sie in den Vordergrund zu schieben, aber es bleibt deshalb trotzdem eine komplexe Größe, die sich mit keinem Mittel aus dem politischen Raum entfernen läßt. Wenn Matius politischer Anhänger Caesars war, so hört er auch bei der öffentlichen Bezeugung seiner „Freundschaft“ nicht auf, ein solcher zu sein, selbst wenn er es gewollt hätte. Was er mit dem verhänglichen Satz sagt, ist im Grunde auch nur eine Binsenwahrheit, denn von Staats wegen sind die Spiele weder veranstaltet worden noch wurde Matius von dort her Veranlassung geboten, sich an ihnen zu beteiligen. Aber

¹ At ludos, quos Caesaris victoriae Caesar adolescens fecit, curavi. At id ad privatum officium, non ad statum rei publicae pertinet. Quod tamen munus et hominis amicissimi memoriae atque honoribus praestare etiam mortui debui et optimae spei adolescenti ac dignissimo Caesare petenti negare non potui.

umgekehrt war beim besten Willen nicht zu bestreiten, daß diese Spiele in einem sehr aktuellen Sinn ein politicum darstellten. Wollte Matius dies durch Hervorhebung des officium privatum bestreiten, so hätte er sich nicht nur gründlich geirrt, sondern wäre ihm dieser Irrtum von der Geschichte auch auf die evidenteste Weise nachgewiesen worden, denn schließlich hat die Folgezeit keinen Zweifel darüber gelassen, was diese ersten politischen Gehversuche Octavians, die Matius so bereitwillig und harmlos unterstützt hat, in Wirklichkeit bedeuteten. Bei Matius geht es im Grunde immer um die Variation ein und desselben Themas. „Politiker“ wurde er als Gefolgsmann Caesars, aber nach seinem Einmaleins war er nur Gefolgsmann und nie „Politiker“, weder vor noch nach dem Tode Caesars, und deshalb treffen ihn alle Vorhaltungen, die an die Adresse des „Politikers“ gerichtet sind, zu Unrecht.

Klares Denken ist nun eben mal nicht Matius' Stärke. Er gibt dafür am Ende des Abschnittes noch einen verhältnismäßig unverfänglichen Beweis. Nach der spitzen Bemerkung über die Republikaner, die bei Antonius ein und ausgehen, verwahrt er sich gegen die Zumutung, sich seinen Umgang von anderen vorschreiben zu lassen (28,7)¹. So etwas hätte Caesar nicht getan. Offensichtlich will er damit den früheren Gedanken, daß man unter der Tyrannie freier lebte als in der Freiheit, wiederaufnehmen, aber das Unternehmen gerät ihm gänzlich daneben. Was er nämlich zu Papier bringt, entbehrt jeder schlüssigen Beziehung und liest sich wie ein Witz ohne Pointe: Caesar hat mir die Freiheit gelassen, die, welche mir den Freund geraubt haben, wollen sie mir nehmen. Um so lehrreicher ist freilich der psychologische Hintergrund für diese Abstumpfung des Gedankens. Nach der inneren Logik hätte Matius sagen müssen: die, welche den „Tyrannen“ getötet haben (d. h. also die Freiheitshelden), wollen mir die Freiheit des persönlichen Verkehrs nehmen (nachdem der „Tyran“ Caesar sie mir eingeräumt hat). Aber Matius steht derartig unter der Herrschaft seines Bestrebens, Caesar als politisches Problem zu umgehen und lediglich auf den besonderen, wie Matius meinte, unpolitischen Gesichtspunkt, unter dem Caesar für ihn angeblich allein existierte, abzustellen, daß er sich um den Effekt des eigenen Argumentes bringt.

Nicht minder psychologisch aufschlußreich ist der Zwischenabschnitt (28,4f., beginnend mit: *at debeo pro civili parte rem publicam velle salvam*)². Sternkopf hat richtig erkannt, daß Matius hier auf die ihm zur Last gelegte Abstimmung für ein caesarianisches Gesetz anspielt. Die näheren Umstände

¹ Veni etiam consulis Antonii domum saepe salutandi causa: ad quem qui me parum patriae amantem esse existimant rogandi quidem aliquid aufuerendi causa frequentes ventitare reperies. Sed quae haec est adrogantia, quod Caesar numquam interpellavit, quin quibus vellem atque etiam quos ipse non diligebat, tamen iis uterer, eos qui mihi amicum eriperunt, carpendo me efficere conari, ne quos velim diligam?

² At debeo pro civili parte rem publicam velle salvam. Id quidem me cupere, nisi et ante acta vita et reliqua mea spes tacente me probat, dicendo vincere non postulo. Qua re maiorem in modum te rogo, ut rem potiorum oratione ducas mihi, si sentis expedire

sind unbekannt und müssen deshalb auf sich beruhen. Aus dem Briefwechsel geht lediglich hervor, daß Cicero an dieser Abstimmung stärksten Anstoß nahm und zur Verteidigung des Matius nur gelten ließ, daß ihn ganz besondere, den anderen unbekannte Gründe dazu veranlaßten oder daß er sich entgegen dem Gerede gar nicht an der Abstimmung beteiligte bzw. dagegen stimmte. Cicero entschied sich für seinen Gebrauch, wohl mit Rücksicht auf seine Unkenntnis der näheren Umstände, für die zweite Alternative. Sternkopf meint nun weiter, Matius hätte ihm in diesem Passus die Bestätigung dafür geliefert und seine Beteiligung abgestritten. Obwohl für Sternkopf aus dieser Deutung sich die grundsätzliche Deutung des Matiusbriefes ergibt, halte ich seine Erklärung für mindestens sehr unwahrscheinlich¹. Sie ist eigentlich schon zu Fall gekommen mit der Notwendigkeit, diesen einfachen Sachverhalt umständlich erraten zu müssen. Wozu diese Umschweife, wenn Matius die Dinge mit drei Worten in Ordnung bringen konnte? Nichts hätte ihm ja lieber sein müssen als mit einem glatten Dementi seine Gegner, deren Bloßstellung er sonst die größte Mühe und seinen gesamten ihm zur Verfügung stehenden Vorrat an Geist und Ironie zuwendet, auf die überzeugendste und durchschlagendste Weise zu überspielen. Daß dies Matius gerade nicht tut, ist eigentlich schon Grund genug, das Gegenteil anzunehmen und mit dem Faktum seiner Zustimmung zu dem Gesetz zu rechnen. Matius hält sich vielmehr an die erste von Cicero berührte Exkulpationsmöglichkeit.

Da er offenbar nicht in der Lage ist, die äußere Tatsache seiner Nichtbeteiligung an der Zustimmung zu behaupten, stellt er seine Argumentation auf die innere Tatsache seiner Gesinnung. Deshalb gleich zu Anfang der emphatische Satz: *At debeo pro virili parte rem publicam velle salvam*. Daß es damit seine Richtigkeit habe, ergebe sich für ihn aus seinem ganzen bisherigen Leben, das im Alter zu verleugnen ihm gänzlich fern läge. Deshalb müsse ihm Cicero schon glauben, daß er keine *communio cum improbis* haben könne, was, umgesetzt in den pragmatischen Zusammenhang, dahin zu lesen ist, daß er, wenn er auch ein Gesetz der outrierten Caesarianer — das sind die *improbi* — angenommen habe, er sich doch verbitte, mit ihnen in einen Topf geworfen zu werden. Dies nach der bekannten Regel, daß wenn zwei dasselbe tun, es noch lange nicht dasselbe ist. Bezeichnenderweise bleibt Matius aber selbst die Begründung hierfür, wenn man es genau bedenkt, schuldig. Anstatt sein Verhal-

recte fieri, credas nullam communionem cum improbis esse posse. An, quod adolescens praestiti, cum etiam errare cum excusatione possem, id nunc aetate praecipitata commutem ac me ipse retexam? Non faciam neque quod displiceat committam praeterquam quod hominis mihi coniunctissimi ac viri amplissimi doleo gravem casum. Quod si aliter essem animatus, numquam quod facerem negarem, ne et in peccando improbus et in dissimulando timidus ac vanus existimarer.

¹ Sternkopf will unter Berufung auf diese Interpretation das Verhältnis der beiden Briefe harmonisieren. Matius hätte wie auch sonst so gerade in diesem kritischen Punkt Cicero eine runde Bestätigung seines Briefes gegeben.

ten oder wenigstens seine Meinung von dem Fall konkret zu erklären, zieht er sich zurück auf die Formalität seines (guten) Willens und Gewissens.

Die Ähnlichkeit mit seiner sonstigen Argumentation ist nicht zu verkennen. Dort leitet er seine politische Position aus dem Freundschaftsverhältnis zu Caesar ab und glaubt, ihr sei dadurch, unter Umgehung der Frage, was Caesar selbst als politische Größe bedeutet, eine überzeugende Sanktionierung zuteil geworden. Hier hält er desgleichen den materiellen Gehalt seines Handelns im Verborgenen und deduziert lediglich aus der politisch-moralischen Integrität seines persönlichen Wesens die Untadligkeit seines in Rede stehenden besonderen Benehmens.

Der Schlußabschnitt (28,8) kehrt dann, nachdem Matius nochmals in recht kräftigen Tönen versichert hat, daß er auf dem richtigen Weg sei, zum Tenor des einleitenden Briefpassus zurück. Matius erklärt sich im Besitz des vollsten Einverständnisses mit Cicero. Er sei Trebatius dankbar, daß er die Gelegenheit geboten habe zu den freundschaftlichen Eröffnungen Ciceros und ihm, Matius, dadurch ermögliche, Cicero noch mehr als früher zu schätzen und zu lieben. Das Auftragen solch starker Farben ist nicht ohne Peinlichkeit, und daß der ganze Brief mit seinem fortwährenden Auftrumpfen ein gründliches Mißverständnis von Ciceros Absichten bedeutet, ist sicher. Nur eines bleibt dabei ungewiß. Ist sich Matius dessen bewußt gewesen und hat er absichtlich die Untertöne bei Cicero überhört? In diesem Fall hätte er Cicero wohl verstanden und damit vor allem gemerkt, was seine wirkliche Meinung war. Seine Abrechnung mit seinen Gegnern wäre dann freilich nicht zuletzt an Ciceros Adresse gerichtet gewesen, dem er auf diese indirekte Weise „die Meinung gesagt“ hätte. Allerdings hätte diese Deutung die Konsequenz, daß alle Beteuerungen von Matius' Freundschaft mit Cicero ironisch zu verstehen wären. Es läge dann also eine Kombination von ostentativ zur Schau gestellter Überlegenheit und Bosheit vor. Angesichts der plumpen und beinahe einfältigen Denkwiese des Matius wird man allerdings Bedenken haben, diese Möglichkeit für wahrscheinlich zu halten. Es bleibt dann nur der andere Weg, an ein ehrliches Mißverständnis zu glauben und anzunehmen, Matius habe tatsächlich Cicero für einen Gesinnungsgenossen gehalten. Ein starkes Stück wäre das freilich auch, und eigentlich mehr Licht fällt damit auch nicht auf das charakterologische Erscheinungsbild von Matius. Der massive Zug, den der Brief vor allem durch seinen auffallenden Mangel an geistigem Differenzierungsvermögen herausbringt, würde dadurch noch eine kräftige Unterstreichung erfahren. Es fällt schwer, sich hierbei festzulegen, aber eine dritte Eventualität ist kaum denkbar und so wird man sich dazu verstehen müssen, in das Selbstzeugnis des Matius, welches sein Brief bietet, auch seine verfehlte und den Adressaten verfehlende Reaktion gegenüber Cicero einzubeziehen¹.

¹ Danach ist erst recht die Überlegung ziemlich müßig, wie Cicero auf den Brief hin sich verhalten hat. Ein Vierteljahr später warnt er Atticus, Matius von der Publikation der

Doch tritt dieses biographische Problem hinter den Wert zurück, den die beiden Briefe als Symptom einer allgemeinen Bewußtseinslage haben. Die Briefe haben trotz ihrer Inkongruenz eine innere Verwandschaft. Jeder von ihnen sucht über die Revolution, die zuletzt in Caesars Monarchie ihren größten Ausdruck gefunden hatte, hinwegzukommen, und jeder tut es im Grunde auf die gleiche Art, daß er vor ihr die Augen verschließt und sie aus dem Bewußtsein zu drängen sucht. Cicero spannt dazu seinen Willen an, um auf der Basis der gesellschaftlichen Konvention nach der Methode des Als-ob eine Brücke über die Kluft, die die Zeit aufgerissen hat, zu schlagen. Er vertraut der menschlichen Gestik und dem menschlichen Takt und versucht sich damit wahrscheinlich an dem allein Sinnvollen, um dem Räderwerk der Politik nicht zu entrinnen, wohl aber es durch ein geheimes menschliches Einverständnis erträglich zu machen. Wenn man also schon in diesen Briefen eine Polarität von Politik und Menschlichkeit zum Vorschein kommen sieht (es kann sich freilich in diesem antithetischen Sinne nicht darum handeln, so wenig wie moderne Humanität mit der Ciceronianischen identisch ist), so muß man sie auf der Seite Ciceros suchen, was freilich über die Denkbarekeit bloßer Ansätze nicht hinauszugehen vermag. Aber Cicero muß erfahren, daß das von ihm versuchte Spiel zu schwierig ist. Er wird von der Erfahrung her widerlegt und an dem Verhältnis von Wirklichkeit und Norm zum Illusionisten. Cicero verstellt sich mit Absicht die Wahrheit (um über sie hinwegzukommen), Matius sagt die Wahrheit mit größter Inbrunst, aber seine „Wahrheit“ ist erst recht verstellt, von innen, ihrer geistigen Tektonik her. Matius baut seine Fiktionen nicht in der Absicht auf, den anderen zu gewinnen und sich mit ihm zu vereinigen, sondern er will sich durch sie selbst behaupten. In seiner Abwehrhaltung sucht er einen Selbstschutz, und gewährt wird ihm dieser durch die Illusion, es hätte weder eine Revolution noch Caesars Monarchie gegeben und alles wäre nach den Regeln guter römischer Tradition in bester Ordnung. Matius ist ein Biedermann mit all' seiner Selbstgewißheit und Befangenheit, der sich nicht nur über sich selbst und die Welt täuscht, sondern auch noch sehr gereizt ist, wenn man seinen Traum stört. Cicero hat bekanntlich die römische Revolution wie viele mit ihm und vor ihm in unzulänglichen Chiffren erkannt, Matius wird zu dem noch größeren Heer derer gehören, die in vollkommener Hilflosigkeit des Sehens kaum merkten, daß es eine gab.

Göttingen

ALFRED HEUSS

Zweiten Philippica wissen zu lassen (Att. 16, 11, 1), rechnet Matius also nach wie vor zu seinen in politicis mit Vorsicht zu behandelnden Bekannten. Daß Cicero von Matius' Antwort nur im geringsten angetan war, ist ziemlich ausgeschlossen. Er wird den Fall als einen hoffnungslosen ad acta gelegt haben. Im übrigen ließ ihm jetzt die Politik zu dergleichen Bemühungen am untauglichen Objekt schwerlich Zeit.

FORSCHUNGSBERICHT

THE CONSTITUTION OF THE ROMAN REPUBLIC 1940-1954*

The title of this article might seem to suggest that it is the writer's intention to comment upon all that has been written during the last fifteen years over the entire field of Republican constitutional history. To attempt such a task would of course be folly. The purposes which can usefully be served by a critical survey of this nature are strictly limited, and it is clearly with a view to function that its form and content must be determined. My chief objects here are two – to clarify the present state of opinion upon matters of constitutional interest which remain a subject of lively debate, and, perhaps more important, to assess the significance and value of evidence which has been variously interpreted by scholars and so adduced in support of a number of entirely different points of view. It is an inevitable consequence of such a programme that many articles and even major writings on aspects of constitutional history should receive no more than a brief notice in the bibliography. Several works in this category are undoubtedly of the greatest moment. If they go unmentioned in the text, it must be understood that this is not because their importance is underestimated, but because they are in general the sole contributions of the period to the study of the particular subject with which they are concerned, and because as a consequence little of value could be added here to what has already been said either by the authors themselves or by subsequent reviewers.

The discussion which follows has been arranged according to particular fields of study and is divided into six sections. The first of these is devoted to a consideration of the origin and early development of the centuriate organization, the second to the *lex curiata*, the third and fourth to the origin of the consular office and the dictatorship, the fifth to the nature of the concept of *imperium*, and the last to the third century reform of the *comitia centuriata*. The list is admittedly anything but complete, and perhaps the most significant omission is that of a section concerned with recent treatment of constitutional problems arising out of the early history of the plebeian body¹. In defence of

* Throughout this article all references in the footnotes to works cited in the concluding bibliography will be made in abbreviated form.

¹ The most significant contribution of recent years in this field is undoubtedly Bernardi's revival of the suggestion that plebeians were already elected to the consulship in some numbers in the fifth century. He has argued his case convincingly in *Rend. Ist. Lomb.* 1945-6, 1 ff., and again, with answers to later criticism, in *Ath.* 1952, 12 ff. There has also

my decision to say nothing on this topic I would plead both lack of space and the extensive nature of the subject. It may be noted too that certain important questions in this field – among them the political significance of the consular tribunate and the efficacy of *plebiscita* in the fifth and fourth centuries – have already been treated by myself at a very recent date and at considerably greater length than would here be possible.²

1. THE ORIGIN AND EARLY DEVELOPMENT OF THE CENTURIATE ORGANIZATION

The ancient sources would have us believe that from the very first year of the Republic Rome's chief magistrates were appointed by an assembly of the *populus* which voted in 193 units;³ and it is probably true to say that there is to-day an increasing number of scholars who are prepared for various reasons to accept their testimony.⁴ However, there are still many dissentients. They may be classified broadly under three heads according to the lines of argument which they employ to discredit the tradition. There are those (A), undoubtedly the majority, whose object it is to prove that the reorganization of the Roman army on a centuriate basis, assigned by Livy, Dionysius and Cicero to Servius Tullius, took place in fact not earlier than the fifth century, and that the emergence of the political assembly is consequently to be dated correspondingly later.⁵ There are those (B), most notable among them A. Bernardi,⁶ who, while not questioning the regal origin of the centuriate system, refuse to admit that it reached its final form as outlined in Livy I, 43 until the fourth century. Finally, there are those (C), represented most recently by A. Guarino,⁷ who prefer to deny the early use and competence of *comitia centuriata* purely on the basis of considerations of a political nature. It will be convenient to examine the principal arguments adduced by each of these three groups in turn.

been some fruitful discussion of the *lex sacra* and the origins of the plebeian tribunate (compare the articles of Altheim, Gioffredi, De Sanctis, and von Fritz cited below).

² J. R. S. 1953, 30ff.; Ath. 1955, 3ff. Not until the latter article was in proof did I see Guarino's remarks upon *plebiscita* in Festschr. Schulz, 458ff. G., in common with most contemporary scholars, rejects the *lex Valeria-Horatia* of 449 B.C. as unauthentic; but he believes the *lex Publilia* of 339 B.C. to have required that official magistrates should submit all *plebiscita* to the *comitia centuriata* for approval. His argument, however, is based principally upon a wholly unacceptable interpretation of Appian, *Bell. Civ.* I, 59 – on which compare recently Biscardi, B. I. D. R. 1951, 234f. ³ Livy I, 43; Dion. Hal. IV, 16ff.

⁴ Compare Last, J. R. S. 1945, 45; De Martino, *Storia*, 149ff.; De Francisci, *Studi Arangio-Ruiz* I, 3ff.; Schönbauer, *Hist.* II, 24ff.

⁵ Compare Cornelius, *Untersuchungen*, 61ff.; D'Arms, A. J. P. 1943, 424ff.; Meyer, *Röm. Staat*, 44ff., 75f.; Alföldi, *Reiteradel*, 102ff.; Pareti, *Storia* I, 382.

⁶ Ath. 1952, 19ff. The same argument for the slow evolution of the centuriate system is also employed, of course, by many of those who refuse to date its origin to the time of Servius.

⁷ R. I. D. A. 1948, 109ff.

Scholars of group A, in so far as they wish to go beyond what might well be admitted by those of group B, must provide a satisfactory proof that a division of the people by centuries, in whatever form and however applied, was incompatible with the conditions of the sixth century, and this they most certainly do not succeed in doing. The contention that hoplite tactics were not introduced to Rome until the middle of the fifth century⁸ is now outworn: for, even if one is prepared to concede that the introduction of such tactics and the reorganization of the Roman army on a centuriate basis are necessarily interconnected, enough has been said by F. Altheim and others to show that the former could well have been, and probably were, inherited from Etruria as early as the beginning of the sixth.⁹ The sceptics have therefore been forced of late to lay their chief emphasis elsewhere. Ernst Meyer and L. Pareti make much of Beloch's suggestion that the original Servian centuries were co-ordinated with the Servian tribes. Because the centuries of *iuniores* in class I numbered 40, they date the reform to *circa* 500 B.C., when the number of Servian tribes stood at 20.¹⁰ But, while there can be little doubt that the establishment of the *exercitus centuriatus* and the ordering of the Roman people into local tribes were part and parcel of the same programme,¹¹ there is absolutely no suggestion in the sources that the distribution of the *populus* into centuries was originally determined by the tribal division, as was of course the case in the later Republic. Rather does Livy expressly state the reverse – *neque eae tribus ad centuriarum distributionem numerumque quicquam pertinuerunt*.¹² It is hardly sound historical method to prefer another date for the Servian reform to the one unanimously indicated by the ancient authorities solely on the strength of a theory for which those same authorities provide not the slightest support.¹³ And is it to be supposed that the Romans, who added a further tribe in 495 B.C.,¹⁴ did not in the previous decade envisage any further extension of territory?¹⁵

⁸ Compare M. P. Nilsson, The Introduction of Hoplite Tactics at Rome, *Journal of Roman Studies* XIX (1929), 4ff.; D'Arms, art. cit., 425; Hanell, *Das altröm. epon. Amt*, 198.

⁹ Altheim, R. G. II, 153ff. Cf. Mazzarino, *Dalla monarchia*, 194ff.; De Martino, o.c., 132ff.

¹⁰ Meyer, 53f.; Pareti, o.c., 382.

¹¹ On this compare the remarks of Last, J. R. S. 1945, 37ff.

¹² Livy I, 43, 13.

¹³ Bernardi appears to believe that the tribes numbered 20 from the time of Servius (Ath. 1952, 20 n. 2; cf. R. S. I. 1954, 8). His views on the original co-ordination of tribes and centuries, therefore, have no bearing on the present argument. It would be interesting, however, to know his reason for antedating the formation of the *tribus Claudia*, which is assigned by Livy (II, 15) to 505 B.C. – for this is the one element in Livy's chapter on the Claudii which would seem to be unassailable.

¹⁴ Against the view of Beloch, Meyer, and Pareti that the *tribus Clustumina* was not formed until much later in the fifth century, compare Bernardi, Ath. 1952, 20 n. 2.

¹⁵ Pareti's suggestion (o.c., 384) that the Romans adapted the centuriate system to an increase in the number of tribes by adding a fifth class of 28 centuries, and so raising the total number of centuries within the classes from 140 (a multiple of 20) to 168 (a multiple

An entirely different approach is made by U. Coli, who finds himself forced by his conclusions upon the nature of the Roman monarchy both to deny the very existence of Servius Tullius and to reject a regal date for the reforms with which his name is associated. The *exercitus centuriatus* was the embodiment of the *populus Romanus*, and on that very account, says Coli, it must of necessity have been a creation of the Republic.¹⁶ This is a new line of argument, and one which deserves respect if only because so much of what Coli has to say about the monarchy carries conviction. But it is surely unduly legalistic. The later identification of the *exercitus centuriatus* with the *populus Romanus* proves little about the part which that *exercitus* was originally intended to play or about the intentions of its creator. Indeed, may it not be the very fact that the centuriate system was the creation of Servius, which gave rise to the false portrayal of that king as the champion of popular sovereignty which Coli so rightly condemns?¹⁷ That Servius envisaged the adaptation of the division for voting purposes, or that he deliberately attempted to weaken the authority of the primitive aristocracy, is a view which probably few even among those who accept a sixth century date for the reform would accept.¹⁸ As H. Last has convincingly argued,¹⁹ his purpose, like that of the Athenian Kleisthenes, may well have been simply to remodel the structure of Roman society with a view to facilitating the introduction of a substantial immigrant population, whose services, particularly in the military field, he regarded as indispensable.

I turn, then, now to consider other arguments, the effect of which, if valid, would be to vindicate the position taken up by scholars of group B. We are asked to believe that the centuriate system, even if it dates in fact to the sixth century, was originally very much less complex than the authorities indicate. What evidence is there to suggest that this may have been the case? Following in the footsteps of De Sanctis, many recent writers on the subject have chosen to lay considerable stress upon estimated population statistics. Rome of the regal period, they say, could not conceivably have provided a permanent fighting force of the size demanded by the traditional account.²⁰ Now it is of course impossible to attain certainty on such a matter as this, but it is seriously to be doubted whether anything new has been said about population in the last few

of 21) is manifestly absurd. In this case, the division by tribes would have run across the division by classes, and so could have served little purpose. ¹⁶ Regnum, 50f.

¹⁷ There was undoubtedly a Servian 'legend', of course; but, along with every other legend, it must have had some basis in fact: and, as Schönbauer has rightly pointed out, the ancient tradition would not have assigned what it believed to be popular reforms to a king, rather than to one of the early and supposedly liberal-minded representatives of a famous family, without very good reason (art. cit., 26; cf. De Martino, o.c., 142).

¹⁸ Compare, however, De Martino, o.c., 148 ff.

¹⁹ art.cit., 41 ff. Compare De Martino, o.c., 140 f.; De Francisci, art.cit., 8 n. 22.

²⁰ For this argument compare Cornelius, o.c., 76 ff.; Meyer, o.c., 48; Bernardi, Ath. 1952, 23 n. 2; H. Hill, The Roman Middle Class (Oxford, 1953), 7 f.; and others.

years which can serve to discredit the general conclusions which were reached in the thirties by such scholars as T. Frank and P. Fraccaro.²¹ According to the annalists the citizen roll stood at 84,000 in the reign of Servius, and at 130,000 at the beginning of the Republic.²² One may reasonably question whether these figures are based upon authentic records; but, in view of the fact that Rome was a flourishing commercial centre during the so-called 'Etruscan' age, and that the Servian wall alone enclosed an area capable of housing up to 100,000 persons, there can be little justification for regarding them as wildly inaccurate.²³ A conservative estimate of the total adult male population under the age of 60 in the sixth century is therefore 20,000—25,000, a figure which at least admits of the existence of an army of the size demanded by the complete centuriate system. It may of course be considered that so large a proportion of the eligible manpower as 80% could not practicably have been kept permanently on demand for military service; but, even if this were to be granted, there would be no reason on that account to deny, as some have done,²⁴ that Servius was responsible for the division of the populace into five property classes, or that the centuries were allocated to those classes in the proportion outlined by Livy and Dionysius. The most that need be conceded is that only *iuniores* were included in the original division.²⁵ In this case the *centuriae seniorum* may never have contained a complement of precisely 100 men, but may well have been added for political purposes at the beginning of the Republic, when the centuriate organization was adapted to form the basis of an assembly representative of the entire *populus*.²⁶

Certain scholars, however, have been particularly concerned to challenge the sixth century origin of the quintuple class division, and their arguments are the more important for students of the Republic in that they are extremely relevant to the question of the distribution of interest in the early electoral

²¹ Frank, Roman Census Statistics, American Journal of Philology LI (1930), 313ff.; Fraccaro, Ancora sull' età dell' ordinamento centuriato, Athenaeum XII (1934), 57ff.

²² Dion. Hal. IV, 22,2; V, 20. Livy I, 44,2 gives the Servian figure as 80,000.

²³ Compare Frank, Economic Survey of Ancient Rome I (Baltimore, 1933), 21. Cornelius makes the arbitrary suggestion that the traditional census statistics for the early Republic are 100,000 too large. But the implication that the population fell by some 60% after the fall of the monarchy is certainly not borne out by the indications that shortage of land was one of the most pressing problems of the early Republic.

²⁴ Compare in particular Bernardi, loc. cit.

²⁵ Such a solution is to be preferred to that of Schönbauer, who suggests that the original 193 centuries contained all citizens who were eligible for military service (art. cit., 28f.). That the centuries of 100 men were actual fighting units which composed the Roman legion has been proved conclusively by Fraccaro (cf. art. cit. and 'La storia dell' antichissimo esercito romano' in Atti del 20. Congresso Nazionale di Studi Romani III (1931), 91ff.).

²⁶ The possibility that the *centuriae seniorum* served a purely political purpose is overlooked by those who date their creation to the fourth century on the ground that they were not earlier a military necessity (cf. Meyer, o.c., 77).

assembly. Some of these are undoubtedly trivial. Few, if any, for example, will be prepared to follow Pareti in dating the introduction of the property classes to 471 B.C. merely on the strength of the suggestion that five *tribuni plebis* were elected after that year, one from each class.²⁷ And there is hardly any more substance behind the more common conjecture that this event must have succeeded the first appointment of censors.²⁸ Indeed there is good reason to think that the creation of the censorship in 444 B.C. is to be associated closely with the events of the preceding year, and that it was occasioned not so much by any sudden increase in the burden of consular duties as by a desire to ensure that such duties were not performed by plebeians who might be elected to the consular tribunate.²⁹ A more formidable challenge to the tradition, however, is presented by the allusion of Gellius and Festus to a one-time distinction between the *classici*, who are said to have been those enrolled in the *prima classis*, and the *infra classem*.³⁰ Relying upon this evidence, Bernardi has recently revived the view of Beloch and Momigliano that there were at one time only two property groups at Rome, the *classici* and the *infra classem*, and that the original Servian legion was drawn entirely from the former.³¹ But even here the case against the tradition is very much less conclusive than Bernardi would have us believe. For one thing, Gellius does not prove, or even imply, that there were ever less than five classes in the centuriate organization. For another, his knowledge of the distinction between the *classici* and the *infra classem* was drawn not from fifth century records, but from the speech of Cato on the *lex Voconia de mulierum hereditatibus*: and this, together with Cato's own implication that the distinction was not clearly defined,³² at least suggests that *classicus* was an epithet with little more than a social connotation.³³

Apart from this, however, it is not at all certain that Bernardi's doctrine can easily be reconciled with the wholly convincing and now widely accepted

²⁷ Cf. Asconius, In Cornel. 68 (with Livy II, 58, 1); Livy III, 30, 7. That there was ever any connection between the number of *tribuni plebis* and the property classes is unlikely in the extreme: and the entire tradition on the size of the early tribunician colleges is probably built on nothing but later conjecture (cf. Momigliano, Bollettino della Commissione Arch. Com. di Roma LIX (1931), 157 ff.).

²⁸ Cf. Hanell, o.c., 196; Bernardi, Ath. 1952, 22.

²⁹ Cf. my remarks in J.R.S. 1953, 30.

³⁰ Gellius VI, 13, 1: *classici dicebantur non omnes qui in quinque classibus erant, sed primae tantum classis . . . infra classem autem appellabantur secundae classis ceterumque omnium classium qui minore summa aeris quod supra dixi censebantur*; Festus 113 M: *infra classem significantur qui minore summa quam centum et viginti milium aeris censi sunt*.

³¹ Beloch, Römische Geschichte (Berlin, 1926), 291; Momigliano, Studi sugli ordinamenti centuriati, Studia et Documenta Historiae et Iuris IV (1938), 511.

³² Frg. 159 M: *quaeri solet quid sit classicus, quid infra classem*.

³³ For similar sentiments in this matter, compare Last, art. cit., 43; De Francisci, art. cit., 9 n. 22.

conclusions of Fraccaro concerning the size and structure of the early centuriate army.³⁴ In so far as he admits the one-time existence of a single legion of 6000 men, which was itself later split into two legions without any addition being made to the total manpower, he is certainly in full accord with Fraccaro. But he differs from him in two very important particulars: he does not accept either that the legion of 6000 was the original creation of Servius, or that it was split into two in the early years of the Republic. This is to ignore some of Fraccaro's most powerful arguments. It may be noted, first, that the later legions of 3000 men continued to contain as many as 60 centuries — a fact which at least suggests that the number 60 was regarded as in some sense sacrosanct, and that a legion of 60 centuries, each with a full complement of 100 men, was provided for in the original Servian structure. However, there is also the question as to the most probable date to which to assign both an increase in manpower and the creation of the second legion. In the early sixth century — a period of considerable economic prosperity — a doubling of the legionary forces of Rome from 3000 to 6000 is what might well be expected: but a substantial increase in such forces in the late fifth century would be very much less easy to understand, if only because the early years of the Republic had witnessed neither immigration nor extensive territorial expansion.³⁵ Likewise, the decision to create a second legion at a time when no additional manpower could be raised is admirably accounted for by the sudden decision to establish a dual command in c. 509 B.C.³⁶ The alternative date of 367 B.C., on the other hand, which is suggested by Bernardi, is quite arbitrary, and derives only the most inadequate support from the fact that the existence of twelve *tribuni militum* is first suggested by Livy under the year 362 B.C.³⁷ Why, it may be asked, should the restoration of the consulship and the consequent reduction

³⁴ Cf. the articles cited above. I do not propose here to detail Fraccaro's argument, for it is one with which the majority of scholars may now be supposed to be familiar. For detailed summaries, see Last, *art.cit.*, 34 ff.; De Francisci, *art.cit.*, 4 ff.

³⁵ It is commonly held that some increase in manpower is indicated by the progressive rises in the number of *tribuni militum* annually invested with *consularis potestas*, and in particular by the rise from 4 to 6 in 405 B.C. (cf. Meyer, *o.c.*, 52 f.; Bernardi, *Ath.* 1952, 43 f.). But such a view rests upon two dubious assumptions — (a) that the number of consular tribunes elected was determined solely by military considerations, and (b) that all the ordinary *tribuni militum* were invariably invested with consular power. I have discussed the matter in detail in *J.R.S.* 1953, 30 ff., where I have tried to show that the significance of the consular tribunate was largely political.

³⁶ Compare H. Delbrück, *Geschichte der Kriegskunst* (Berlin, 1900), I, 270.

³⁷ Livy VII, 5.9. Notwithstanding what I myself wrote in *J.R.S.* 1953, 32 n. 18, Livy does not give us any good reason to suppose that the number of military tribunes was increased in 362 B.C. He merely mentions that six were from that date chosen by the *populus*. It is very possible, therefore, that twelve had been regularly appointed from the beginning of the Republic. That six places were now thrown open to popular election is to be explained simply by the fact that since 444 B.C. six had been eligible for the receipt of *consularis potestas* at the hands of the *comitia* (cf. Livy IV, 16.6; Dion. Hal. XI, 60.5).

in the number of annual magistrates invested with *imperium* automatically have suggested a doubling of the number of tactical units? And, if it be said that there was no necessary connection between the two reforms, why did the Romans not think of creating a second legion some forty years earlier, when in Bernardi's view the total manpower had been increased?

If Fraccaro's conclusions are to be accepted at all, then, they should be accepted more or less *in toto*. Recent scholarship cannot be said to have provided any good reason either for questioning his general position or for distrusting the verdict of the tradition that all five property classes were of Servian creation. Nor, it may be added, has it succeeded in disproving the regal origin of all eighteen *centuriae equitum*. Disagreement in the sources concerning the age of the *sex suffragia* and their general confusion about the date and size of various increases in the number of equestrian centuries has, as in the past, provided ample scope for arbitrary reconstruction.³⁸ But it remains true that no single source knows of any addition to their number in Republican times; and it is a reasonable assumption that a Servian legion of 60 *centuriae* should have been attended by a force of 60 *turmae*, each containing 30 *equites*. There is, however, a more real difficulty in the way of accepting the annalistic tradition exactly as it stands. I refer to the politically important circumstance that in the complete *ordo* as described by Livy and Dionysius the centuries of *equites* together with those of the *prima classis* just – and only just – enjoyed a majority over the remainder. That this should have been the case in an organization which was originally military in purpose is hard to believe, and the possibility that some adjustment was made when the political assembly came into being must therefore be conceded. Nevertheless, there is no reason on this account to abandon Fraccaro's conclusions, or to suggest, as Bernardi does, that the centuriate system at one time extended only to the *equites* and those who later qualified for inclusion in the *prima classis*. If the *centuriae seniorum* were added only at the beginning of the Republic, the original majority of the *equites* and the first class would have been as many as 18. And it is of course possible that minor alterations were made in the number of centuries assigned to the lower classes.³⁹ But we need assume no more.

There remains now the question as to when a fully competent political assembly based upon the centuriate division first began to function. Largely on the strength of a reference in the Twelve Tables to the *comitiatus maximus*⁴⁰ – undoubtedly the *comitia centuriata* – most scholars are to-day agreed that this

³⁸ On the equestrian centuries, compare recently Meyer, *o. c.*, 77; Alföldi, *o. c.*, *passim*; Hill, *o. c.*, 4 ff.; Bernardi, *Ath.* 1952, 23 f., 48 f.

³⁹ It is possible, for example, that the number of *centuriae iuniorum* in the fifth class of the original Servian system was not 15, but, as in all the other classes, a multiple of ten. Cf. D'Arms, *art. cit.*, 424; Bernardi, *Ath.* 1952, 51 n. 3.

⁴⁰ Cicero, *De Leg.* III, 11, 44, *De Domo* 43, *Pro Sestio* 65, 73, *De Rep.* II 61.

assembly was officially recognized and was responsible at least for the consular elections from a time well before the middle of the fifth century, if not from the first year of the Republic.⁴¹ However, Guarino provides an exception to this rule. He has attempted to discredit the evidence of the Twelve Tables,⁴² and has denied that the *comitia centuriata* enjoyed official status until the fourth century. The reasons which he adduces for this belief are two: first, that, if such *comitia* had functioned earlier, it would be impossible to understand why plebeian consuls were not repeatedly elected, or why for that matter the plebeians had ever felt constrained to organize themselves as they did in their own peculiar *concilium*, and, second, that the *auctoritas patrum* as applied to decisions of the *comitia centuriata* must have originated at a time when the Senate was the central organ of the state, and when the deliberations of the centuries were unofficial and legally invalid.⁴³ Neither argument is convincing. To suggest that the centuriate assembly could conceivably have been regarded by plebeians as an effective substitute for the *concilium plebis* is not only to forget that the business which came before the former was determined by the presiding magistrate: it is to accept the popular but almost certainly erroneous belief that the voting in the *comitia centuriata* was commonly favourable to the plebeian cause.⁴⁴ That those included in the influential first class of the census were for the most part non-patricians can hardly be doubted; but it is very much more questionable whether the majority among them shared the interests

⁴¹ Compare, among others, Last, art.cit., 45; Cornelius, o.c., 75; Meyer, o.c., 51; De Martino, o.c., 156; Altheim, R.G. II, 161; Schönbauer, art.cit. 46ff. While not disputing that *comitia centuriata* were functioning by the middle of the fifth century, De Francisci would date their origin later than 509 B.C. on the ground that the consuls received a *lex curiata* – a circumstance which indicates in his opinion that the military organization of centuries had not been adapted for political use when these officers were first elected. (S.D.H.I. 1944, 159. Cf. Cornelius, o.c., 75; Hanell, o.c., 196ff.). On this vexed question, however, see the following section.

⁴² His arguments have recently been convincingly refuted by De Francisci (Studi Arancio-Ruiz I, 20ff.).

⁴³ R.I.D.A. 1948, 109ff.; Studi Solazzi, 27ff.

⁴⁴ It is common for scholars to draw too sharp a contrast between the essentially timocratic centuriate organization of Servius and the aristocratic curiate order which it superseded. Thus it is frequently stated that, with the change in the structure of society in the sixth century, power moved from the hands of the *equus* into those of the hoplite, and that as a consequence the way was paved for the ascendancy of the rich plebeian (cf. Altheim, R.G. II, 167ff.; Bernardi, Ath. 1952, 30ff.). Such assertions are misleading. In some ancient states, as for example at Athens, the substitution of artificial groups for those based on ties of kinship and *clientela* as military and administrative units did in fact result in the weakening of aristocratic influence. But in such cases the immigrant population, whose presence occasioned the reform, remained for many years indispensable to the life and prosperity of the community. At Rome, this new element was forced to take its place in a restricted and almost wholly agricultural economy after a comparatively short period, and long before the strength of the old *clientelae* had been shattered. For the more probable opinion that the *comitia centuriata* of the early Republic favoured the patrician interest, compare now Schönbauer, art.cit., 48f.

of the typical *tribunus plebis*, or were in fact to any extent hostile to the patrician administration. Many may have been clients, and many more may have been plebeians of aristocratic descent who were fully prepared to follow the lead given by the eighteen centuries of *equites equo publico*. Indeed, Guarino's whole case would seem to be seriously prejudiced by the knowledge that the assembly continued to show a preference for patrician consuls even after 367 B.C., the date at which in his view it was finally recognized as an organ of popular expression.

Equally without foundation is the appeal to the *auctoritas patrum*. We must agree with Guarino against Nocera⁴⁵ that the *auctoritas* took the form of an 'apprezzamento di merito', and that it was probably of Republican origin; but there is little ground for the further suggestion that it must therefore have originated when the centuriate assembly was something of a revolutionary body. Whether one regards the institution of the *auctoritas patrum* as contemporary with the foundation of the Republic or – as seems to me more likely – of somewhat later date, it is always possible to suppose that it was directed not so much against the decisions of a potentially hostile assembly as against the possible irresponsibility of individual magistrates who might be prone to use their *ius agendi cum populo* for personal ends.

There can be little doubt, then, that the centuriate assembly did function as an official organ of the *populus* before 451 B.C. Whether at that time it enjoyed the same powers as in later years is a question to which it is more difficult to give a decisive answer. I have myself argued for the view that it did not serve as a court of criminal appeal until after the Decemviral legislation.⁴⁶ H. Siber and P. De Francisci, however, go much further.⁴⁷ They argue that before the Twelve Tables the *comitia* had no power of choice between candidates at elections, and no power to reject laws, all of which were carried by the magistrate in the form of *leges datae* – or, as De Francisci prefers it, *leges latae* – and were presented to the assembly merely for its cognizance. The evidence which they call in their support is the second of the *leges Valeriae Horatiae* of 449 B.C. – *ne quis ullum magistratum sine provocatione crearet*, which they interpret as a measure providing for the complete prohibition of *leges datae*.⁴⁸ This is an extremely slender straw, however, upon which to build so radical a thesis. It must be admitted that the *lex Valeria Horatia de provocatione*, as it stands, is out of place in 449 B.C.; but, given the beliefs of the tradition concerning the peculiar exemption of the Decemvirs from *provocatio*, its inclusion by the annalists in the legislation of that year can well be explained without the need

⁴⁵ Il potere, 252f. For the view that the *auctoritas patrum* was a primitive institution, compare also De Francisci, Studi Albertario I 412, n. 4. ⁴⁶ Hist. III, 412ff.

⁴⁷ Siber, Röm. Verf., 47 (cf. Die plebejischen Magistraturen (Leipzig, 1936), 63ff.); De Francisci, Studi Arangio-Ruiz, I, 9ff.

⁴⁸ Livy III, 55.5; Cicero, De Rep. II, 54.

to resort to so arbitrary an interpretation.⁴⁹ Furthermore, there are other considerations which Siber and De Francisci do not appear to have taken into account when formulating their theory, and which certainly suggest that the *comitia centuriata* had greater power than they are ready to believe. The *Fasti* of the early fifth century, for example, contain under several years the names of plebeian consuls. There is, of course, no means of proving that these men, if authentic, were not appointed by their patrician predecessors in every case; but it must be generally admitted that their presence in the lists, and in particular their tendency to appear in groups over relatively short periods,⁵⁰ is more easily explained if the choice of consuls in each year depended at least to some extent upon the whims of the popular assembly. Again, there is the significant fact that as early as 471 B.C., and probably earlier, the poorer citizens of Rome had been meeting regularly to elect representatives, and to ratify or reject proposals which were put before them. In view of this, is it not extremely improbable that the official assembly of the state, which was dominated by men of wealth, and which already by 451 B.C. bore the epithet *maximus*, should have failed to clamour for, and indeed to assume, comparable powers of deliberation?

2. THE LEX CURIATA

In the foregoing section I have been concerned with the origins of the assembly of the *populus* which was responsible for the election of Rome's chief magistrates. I turn now to consider the act of the much older *comitia curiata* which, at least in the earlier stages of the Republic, were regularly associated with such elections – the so-called *lex curiata de imperio*. Here the issues are very much more complex. The historian is faced with the task of determining not only the age of the *lex*, but also its content and function. What did the *lex curiata* confer upon newly elected consuls? And, if in fact it conferred nothing, what was the precise purpose which it served? These are questions upon which many in recent years have speculated without reaching any substantial measure of agreement.

The different views expressed on this subject are too numerous all to be considered on their own merits. However, if for the moment we set aside the question of the origin of the *lex curiata*, it is possible to reduce the fundamental issues upon which opinion is divided to two. First, was there or was there not a necessary connection between the *lex* and the *imperium*, in the sense that the *lex* was by its very nature inapplicable to any but *imperium* holders? Second, was the *lex* in any way concerned with the conferment of the *ius auspicii*? These questions must be treated as entirely independent one of the other; for it is

⁴⁹ Cf. Hist. III, 427.

⁵⁰ Cf. Bernardi, Rend. Ist. Lomb. 1945–6, 6ff.

clear from the writings of recent years that an affirmative answer to the first may well be accompanied by a similar answer to the second.⁵¹

Scholars who assert a direct relationship between the *lex curiata* and the *imperium* are undoubtedly in the majority, although upon the precise nature of this relationship opinions differ quite widely. There are some, among them A. Heuss,⁵² who believe that the *lex* at one time conferred the *imperium*, and who consequently explain its place in the Republican constitution as a relic from days before electoral functions were assumed by the *comitia centuriata*. U. v. Lübtow, on the other hand, regards it as a necessary and indispensable adjunct of *imperium*,⁵³ while others again, among them those who follow K. Latte in tracing the *lex curiata* to a primitive *coniuratio* of warriors, prefer to see it as a mere formality, which followed the conferment of *imperium*, but which had lost all significance even before the end of the fifth century.⁵⁴ All, however, have the one doctrine in common – that the *lex* was something which was applicable only to those who were furnished with *imperium*. It is unfortunate that a detailed discussion of the evidence to support this opinion is to be found only in Heuss, and it is somewhat paradoxical that the interpretation which he puts upon that evidence is such as would not for one moment be endorsed by those who take the same general view. Heuss believes that *imperium* was originally confined to the military sphere. He is therefore not forced to rely solely upon the indications of the ancient authorities that the *lex curiata* was carried *de imperio*,⁵⁵ but can also attach considerable weight to the statement of Cicero – *consuli si legem curiatam non habet attingere rem militarem non licet*.⁵⁶

In the opposing camp the principal protagonist is F. Altheim.⁵⁷ For him the more significant ancient references are not those which appear to link the *lex curiata* with *imperium* – although he does not attempt to explain them – but those which associate it closely with the *auspicia*. Such, for example, is Cicero's statement that the *comitia curiata* remained in being *tantum auspicioium causa*.⁵⁸ By consideration of these Altheim is led to postulate that the *lex curiata* was

⁵¹ For the view that the *lex curiata* had a direct connection with both *imperium* and *auspicium*, compare Mazzarino, *Dalla Monarchia*, 217 ff. De Francisci, (*Studi Albertario* I, 407 ff.) and Voci (*Studi Albertario* II, 73 with note 26) on the other hand, would appear to deny that it had a direct connection with either.

⁵² Z. S. S. 1944, 77 ff. Cf. Bernardi, *Ath.* 1952, 207; Hanell, o. c., 196 ff.

⁵³ Z. S. S. 1952, 169.

⁵⁴ Latte, 'Lex curiata und coniuratio', *Göttinger Nachrichten Gesellschaft* 1934, 59 ff. Cf. Stark, *Hermes* 1940, 206 ff.; De Francisci, *Arcana* III/1, 48; Guarino, *Studi Solazzi*, 26. De Martino (o. c., 128) accepts a similar connection with the *imperium*, but in accordance with his own theory about the nature of *imperium*, he differs radically from Latte in his view of the origin of the *lex*.

⁵⁵ Cicero, *De Rep.* II, 25, 31, 33, 35; Livy IX, 38, 15. etc.

⁵⁶ *De Leg. Agr.* II, 30. Cf. Livy V, 52, 12: *comitia curiata quae rem militarem continent*.

⁵⁷ R. G. II, 86.

⁵⁸ *De Leg. Agr.* II, 27; cf. 31; Dion. Hal. IV, 40, 2.

required by every magistrate who had the *ius auspicii* in his own right, and so by the minor magistrates of the Republic who had no *imperium*. Confirmation is sought in the implication of Tacitus that Brutus carried a *lex curiata* for his quaestors in the first year of the Republic,⁵⁹ and in the famous but somewhat obscure pronouncement of M. Valerius Messalla – *minoribus creatis magistratibus tributis comitiis magistratus, sed iustus curiata datur lege; maiores centuriatis comitiis fiunt*.⁶⁰

Neither of these two writers can be said to have proved his case; and both are to some extent guilty of straining the evidence unduly. With his strict interpretation of Cicero, *De Leg. Agr.* II, 28, Heuss is compelled to make light of Dio's statement that, by not allowing the *lex curiata* to be introduced in 56 B.C., Clodius prevented the institution of any lawsuit and the transaction of all other serious public business.⁶¹ It is hardly possible to discredit Dio, as Heuss attempts to do, by pointing to the fact that Clodius, as aedile, was not competent to interpose a veto; for there were undoubtedly those in the tribunician college of the same year, among them C. Cato, who would have worked his will. Altheim, on the other hand, probably goes too far in claiming the applicability of the *lex curiata* to the minor magistrates. The unreliability of Tacitus as an authority on the Republican constitution need not be re-emphasized, while it is now generally agreed that the passage from Gellius is hopelessly corrupt. Despite Altheim's protestations, the sentence as it stands makes little sense, and, in so far as it can be interpreted to say anything positive, appears to imply not that the *lex curiata* was required for all magistrates, but that it was required for the *magistratus minores* alone. This is an undoubted falsehood, and there is thus clearly a case for emendation. As to the precise form of the original text there can, of course, be no certainty, but it is at least probable that Messalla intended to convey exactly the opposite to what he appears to be saying, namely that the *lex curiata* was needed to render *iustus* the magistracy of the *magistratus maiores*.⁶² Finally in this connection, if, as Altheim asserts, all minor magistrates received their *ius auspicii* by the *lex curiata*, what account is to be given of the fact that the censors, first elected in 443 B.C., received theirs by a *lex centuriata*? This is a question to which neither he nor any of his followers have provided a convincing answer.⁶³

⁵⁹ Annals XI, 22.

⁶⁰ Gellius XIII, 15,4.

⁶¹ Dio XXXIX, 19,3.

⁶² The most satisfactory emendation so far offered is that of Lübtow: — *minoribus creatis magistratibus tributis comitiis magistratus iustus est. maiores centuriatis comitiis fiunt, sed iustus magistratus datur lege curiata, censor lege centuriata*.

⁶³ It is true that Cicero (*De Leg. Agr.* II, 26) speaks of a *lex centuriata* for censors and a *lex curiata* for *ceteris patriciis magistratibus* – and this might be thought to imply that even quaestors and curule aediles received a *lex curiata*. But Latte gave an effective warning against interpreting Cicero's use of the term *patricii magistratus* too literally in this particular passage (art. cit., 60). On the other hand, the recent attempt of Heuss (art. cit., 73) to overcome the difficulty by equating *patricii magistratus* with holders of

The basic issues, then, are left more or less undecided. It may not be possible to accept either that the *lex curiata* referred exclusively to the *imperium militiae*, or that it was universally applicable to the minor magistrates; but nothing that may be said either in favour of or against such views commits us to take any definite stand on the question as to whether or not the *lex curiata* and the *imperium* were necessarily related. Nor indeed is it of much avail either to emphasize that consuls appear on occasions to have exercised *imperium* without a *lex curiata*,⁶⁴ or to point out that no *lex curiata* is recorded for such minor holders of *imperium* as the *magister equitum* and the *legati* of Pompey; for, apart from the uncertainty of the evidence and the obvious objections to an argument from silence, these circumstances do not in any way militate against those who regard the *lex* as an outdated relic which very soon lost all significance.⁶⁵ There is clearly a need for a more general approach to the whole problem; and I should like here to make but one point, obvious perhaps, but commonly overlooked, which suggests to me that the majority opinion on this matter is mistaken.

It is known on Cicero's authority that the election of censors was followed exceptionally not by a vote in the *comitia curiata*, but by a second vote in the *comitia centuriata*. A common explanation of this circumstance is that the *lex centuriata* as applied to censors was a mere copy of the *lex curiata*, introduced at a time when the *comitia curiata* were already decadent, and when the original function of that law had already been forgotten.⁶⁶ This, however, will not do. It is probably true to say that by 443 B.C. the curiate assembly had lost what little importance it may have had at the beginning of the century – and this certainly could go a long way towards explaining why the censors received a *lex centuriata* rather than a *lex curiata*; but it is altogether another matter to suggest either that the original function of the *lex curiata* had already been forgotten, or that, if it had been forgotten, the Romans introduced a second *lex centuriata* simply and solely from the desire to model the procedure at the election of censors as closely as possible upon that adopted at the election of consuls.⁶⁷ Against the first possibility may be adduced the fact that in 443 B.C. a mere sixty-five years had elapsed since the Romans, apparently in full recognition of its function, had first applied the *lex curiata* to consuls; while, if the second were true, we might very naturally wonder why the *lex centuriata* was not introduced on the same principle in connection with the curule aedileate in 367 B.C. We are therefore compelled to accept the only alternative solution *imperium* cannot stand up to scrutiny, and runs counter to all the evidence (cf. Mommsen, *Röm. St.* I³, 18 n. 2).

⁶⁴ Dio XLI, 43; Cicero, ad Att. IV, 16, 12.

⁶⁵ They are more serious for v. Lübtow, who believes that the *lex* was vital for the exercise of *imperium*.

⁶⁶ Compare recently v. Lübtow, art.cit., 170.

⁶⁷ That the secondary vote must have been regarded as of some importance when it was made applicable to censors in the form of a *lex centuriata* has been recognized by Tibiletti (*Stud. Ghisler.* 1950, 373).

to the problem, and to say that the *lex centuriata* was introduced for censors deliberately and in order that it might fulfil a function which was discharged for consuls by the *lex curiata*. This can mean only one thing – that the secondary law, whether curiate or centuriate, was in principle and by its very nature applicable to censors, and thus to magistrates who were not holders of *imperium*.

It remains, of course, an undisputed fact that all those in whose favour a *lex curiata* (as opposed to a *lex centuriata*) was carried were holders of *imperium*; and it is possibly this which led the ancients to associate the curiate law with the *imperium*, and even to speak as if it referred specifically to the power of military command. But, if I am right, that connection can be explained as accidental rather than necessary. If one discounts the third praetor, who was appointed as the colleague of the consuls and therefore subjected to the same electoral procedure, all the *imperium* holders for whom a secondary vote was carried held offices which dated from a time before the *comitia curiata* had lost their importance. The censor, on the other hand, was of later origin; and it is this circumstance rather than any failure of *imperium* in his case which may well account for the fact that the vote carried in his favour was centuriate and not curiate.⁶⁸

I pass now to the second major issue. Was the *lex curiata* carried specifically *auspiciorum causa*? Again, an answer is suggested by the fact that the counterpart of such a law was passed for censors. These magistrates and all the others for whom a secondary vote was required had one thing in common: they bore the *auspicia maxima*, and were called by the generic name *magistratus maiores*.⁶⁹ It is surely reasonable to suppose, therefore, either that this vote made their *auspicia* greater than those of the other magistrates, or that it was required in their case because their *auspicia* were *maxima*.

It may be noted that it is only on the strength of a connection such as this between the *lex* and the *auspicia* that one can explain much that must otherwise remain obscure. The recorded statement of Appius Claudius, consul of 54 B.C., that the *lex curiata* was desirable rather than essential for his succession to the governorship of a province, becomes perfectly comprehensible, as indeed do Cicero's doubts on the matter.⁷⁰ What Appius lacked was not the *imperium*, but the consuls' *ius auspicii* – the right to seek divine blessing for the exercise of that *imperium*, and therefore the *auctoritas* which such a right conferred.

⁶⁸ It is true, of course, that a *lex curiata*, and not a *lex centuriata*, was proposed for the *decemviri* under the Rullan law of 63 B.C. But their *imperium* was to be praetorian (Cicero, *De Leg. Agr.* II, 32); and in any case one can attach little importance to the political manoeuvres of the late Republic.

⁶⁹ Cf. Messalla in Gellius XIII, 15,4: *patriciorum auspicia in duas sunt divisa potestates: maxima sunt consulum praetorum censorum ... reliquorum magistratuum minora sunt auspicia: ideo illi minores, hi maiores magistratus appellantur*; Festus 157 M.

⁷⁰ *Ad fam.* I, 9,25. Cf. *Ad Q. fr.* III, 2,3.

Again, the fact that Pomptinus was denied a triumph on the ground that he had received no *lex curiata*,⁷¹ no longer appears as a paradox. In order to lead an army to victory a magistrate needed the *imperium* alone: in order to triumph he was required to show that the battle had been fought under his own *auspicia*.⁷²

In the light of what has been said, the most satisfactory solution to the basic problems raised by the *lex curiata* would appear to be that the relationship between the *lex* and the *auspicia* was a necessary one, whereas that between the *lex* and the *imperium* was entirely accidental. This is, of course, to leave many questions unanswered. What, for example, was the precise nature of the connection with the *ius auspicii*? And was the *lex* of regal or Republican origin? It is impossible here to review these particular matters in detail; but it would be wrong to conclude without making some brief reference to certain important and relevant conclusions which have been reached by Coli in his recent work on 'Regnum'. Coli, it is true, does not commit himself to the acceptance of any direct relation between the *lex curiata* and the *auspicia*, but, as a guide to those who do in forming an opinion about the origin and function of the *lex*, some of his observations as included in the chapter on the 'Aspetto religioso della regalita' are invaluable. It will suffice here to note but two of the points which he makes, for which I find his arguments entirely convincing.⁷³ The first is that the *rex*, as the representative of Jupiter who had been approved by that deity at the ceremony of *inauguratio*, did not require to take the auspices for each of his public acts.⁷⁴ The *auspicia publica* therefore dated only from the overthrow of the monarchy and the establishment of the Republican form of government.⁷⁵ The second is that the *auspicia* of the Roman magistrates were inherited through the *interrex* from the *auspicia privata* of the *patres*.⁷⁶ The implications of all this for the history of the *lex curiata* are obvious. First, if the *lex* had reference to the *auspicia publica*, it like them can have been no older than the beginning of the Republic.⁷⁷ Second, the *lex* cannot specifically have conferred the *auspicia*, in so far as these were ultimately derived from the *interrex* and were thereafter handed down from one magistrate to his successor. Its purpose, then, can only have been to afford popular recognition of the right

⁷¹ Cicero, *Ad Att.* IV, 16, 12.

⁷² On the very close connection between the *auspicia* and the triumph, compare M. Levi, *Auspicio imperio ductu felicitate*, *Rend. Istituto Lombardo* LXXI (1938), 109 ff. — also Mommsen, *Röm. St.* I³, 130.

⁷³ I note that Bernardi also accepts Coli's conclusions on this matter (*Ath.* 1952, 30).

⁷⁴ *Regnum*, 98.

⁷⁵ Coli, of course, rejects the suggestion that there were any regal auxiliaries endowed with an independent *ius auspicii*. On this possibility, see below.

⁷⁶ *Regnum*, 93 f.

⁷⁷ The suggestion that the *lex curiata* dated only from the first year of the Republic is made also by Lübtow. For him, however, the *lex* expressed the will of the gods that the magistrate concerned should wield *imperium*.

of the newly elected magistrate to take auspices in an official as opposed to a private capacity, and thus formally to confirm his *auspicia* as *auspicia publica* or *auspicia populi Romani*. That originally it should have been the aristocratic assembly of curies with its strong religious associations rather than the timocratic and essentially military assembly of centuries which assumed the responsibility for tendering such approval, needs no explanation.

3. THE ORIGIN OF THE CONSULSHIP

The nature of the transition from the monarchical to the Republican regime is a topic which has at all times readily commended itself to the consideration of both the historian and the student of Roman law; and it cannot be said that the past fifteen years have revealed any waning of interest. Nevertheless, despite all that has been written and published, it remains as true to-day as ever it did that there is a complete absence of unanimity among scholars concerning most of the vital issues associated with the origin and development of the primitive Republican magistracy. On one point alone does there appear to be any increasing measure of agreement – for the indication is that by far the greater proportion of contemporary writers are prepared now to believe that the last king of Rome was overthrown by force, and that the monarchy therefore came to a sudden end. But even here there are still dissentients, among who the two Swedish scholars, K. Hanell and E. Gjerstad, should perhaps be marked out for particular mention, in that they alone have attempted to support the doctrine of evolution with fresh argument.

Hanell's case for the rejection of the 'revolution' is based principally upon the belief that the Roman annalists were misled in their assumption that the extant list of eponymous magistrates dated from the very year in which the monarchy fell. An eponymous magistracy could have existed even at a time when the *rex* wielded some measure of political power, and it might well have come into being with the introduction of the pre-Julian calendar – an event which Hanell associates with the foundation of the Capitoline temple.⁷⁸ Now, as Bernardi has aptly remarked in his review of Hanell's book,⁷⁹ it might reasonably be asked why it was, if a *rex* still held sway after 509 B.C., that the temple which had been commissioned by Tarquinius should in the event have been dedicated by a praetor.⁸⁰ But, even if one is prepared to overlook this difficulty and to accept without question the highly dubious argumentation of Hanell on the subject of the age of the pre-Julian year,⁸¹ one is still not entitled

⁷⁸ o.c., 95 ff., 183 ff.

⁷⁹ Athenaeum XXVI (1948), 146; cf. Ath. 1952, 8 n. 1.

⁸⁰ Dion. Hal. V, 35,3. Cf. Hanell, o.c., 171 f.

⁸¹ On this and other doubtful parts of Hanell's argument, compare F. W. Walbank, Classical Review LXII (1948), 83 f., Ernst Meyer, Museum Helveticum IX (1952), 176 ff.

arbitrarily to reject the annalistic version of events. It is incumbent upon the critic of the tradition not merely to explain it away, but to show convincingly that it is fundamentally unacceptable, and that there is therefore some explaining away to be done. Hanell, it is true, points lamely to the continuation of temple-building in the early fifth century and to the appearance of a L. Tarquinius as *magister equitum* as late as 458 B.C.,⁸² but on the whole he makes no serious attempt to discredit the traditional view.

Certainly, the same criticism cannot be levelled against Gjerstad, whose excavations at Rome have brought to light material which, in his opinion, tends to confirm his compatriot's thesis. A fragment of Attic pottery, datable, we are told, to the period 510-475 B.C., has been unearthed in the lower section of the Servian *agger*. Gjerstad believes that, as a result, a radical reconstruction must be made of early Roman chronology. Servius Tullius must be placed at the very end of the sixth century, and Tarquinius Superbus in the middle of the fifth; and the eponymous list must therefore date from some fifty years before the fall of the monarchy.⁸³ Again it is Bernardi who has come to the defence of the tradition by questioning the accuracy of Gjerstad's system of dating.⁸⁴ When it is remembered that fashions in early Rome must have been very slow to change, and that trade came to a virtual standstill towards the end of the sixth century, it appears extremely hazardous to date the building of the Servian *agger* to within thirty years merely on the strength of a single find of pottery. But Gjerstad's conclusions should not commend themselves even to those who have more faith in the precision of archaeological dating. If it were necessary - as I do not believe it is - to make a choice between the traditional date for the Servian *agger* and the traditional date for the fall of the monarchy, few, I think, would hesitate to reject the former. The remarkable consistency of the sources, the necessity for explaining the Lucretia legend by reference to some authentic historical event, indications of a marked deterioration in the Etruscan position in Italy towards the end of the sixth century, the serious economic crisis at Rome in the early fifth century which gave rise to discontent among the lower classes, the Roman horror of *regnum*⁸⁵ - all these

⁸² Dion. Hal X, 24,3. Livy (III, 27,1) and the Fasti Cap. give the name as Tarquitius.

⁸³ Boll. Comm. Arch. 1949-50, 13 ff.

⁸⁴ R.S.I. 1954, 7 ff. Bernardi has also dealt very effectively with the more trivial, non-archaeological arguments which Gjerstad has adduced in his support.

⁸⁵ Mazzarino (o.c., 181) has recently revived De Sanctis' contention that the Roman hatred of monarchy dated from the second century B.C. But this is unlikely. Contact with the Hellenistic monarchies might perhaps have served to accentuate the Roman pride in *libertas*, but it is difficult to believe that the violent and unreasoning antipathy to *regnum* which was felt even by Romans of the first century B.C. can have been born of anything but direct experience. It proves nothing that the Romans set up statues to their kings, or that they revered the name of Servius Tullius; for emotions are not governed by logic, the more particularly if they are instinctive and inborn.

are familiar arguments for the doctrine of 'revolution'; but they cannot on that account be ignored, and there is at last some sign that they are beginning to be treated with the respect which they deserve.⁸⁶

There are comparatively few scholars to-day, then, who would account for the political eclipse of the *rex* by reference to a gradual devolution of power. But, to judge from contemporary writing, there would appear to be still fewer who are prepared to follow Mommsen and Rosenberg in accounting for the dual consulship as a conception of genius, designed primarily to preclude a recurrence of monarchical rule.⁸⁷ The line of argument now almost universally adopted is that the principle of annuality in office must have appeared in itself an adequate safeguard against a possible return to *regnum*. The somewhat complex arrangement whereby that principle was combined with those of *par potestas* and *intercessio* cannot therefore have been demanded simply and solely by the situation which arose in c. 509 B.C. It must have been the outcome of a slow evolutionary process, we are told, or, alternatively, it must have been suggested by some other single development whether of the regal or early Republican era.⁸⁸ The more traditional among scholars, who accept the *Fasti* at their face value, and are willing to credit the testimony of the ancient authorities that the dual magistracy was instituted in the first year of the Republic, trace equal collegiality to a supposed division of labour under the monarchy. They see the prototypes of the later consuls in two auxiliaries of the *rex*, identified by Bernardi with two commanders (or *praetores*) of the Servian legion,⁸⁹ and by P. Voci with two *iudices* who were responsible for civil jurisdiction.⁹⁰ Of these suggestions the former is probably the more attractive. The sources themselves provide not the slightest hint that the *rex* employed even a single *iudex*, let alone two,⁹¹ and, even if they did, it would not be at all easy to explain why such officials should have been chosen as the model for the Republican consuls, one of whose principal concerns was destined to be for many years the conduct of military campaigns. Bernardi, on the other hand, is able to quote Dionysius IV, 85, where mention is made of two commanders at Ardea before the fall of Tarquin; and it is at least a plausible view that the

⁸⁶ Compare recently De Martino, *o.c.*, 176ff.

⁸⁷ Mommsen, *Röm. Gesch.* I⁷, 246ff.; Rosenberg, *Der Staat der Alten Italiker* (Berlin, 1913), 81. Compare to-day Altheim, *R.G.* II, 145.

⁸⁸ For these sentiments, compare Bernardi, *Rend. Ist. Lomb.* 1945-6, 3f., *Ath.* 1952, 17; Gioffredi, *Boll. Comm. Arch.* 1943-5, 129ff.; Guarino, *R.I.D.A.* 1948, 99; Voci, *art.cit.*, 85; De Martino, *o.c.*, 183f. ⁸⁹ *Ath.* 1952, 24ff. ⁹⁰ *art.cit.*, 83ff.

⁹¹ For collegiality in this sphere Voci refers us to the *duoviri perduellionis* and to the two *quaestores parricidii*. But it may well be questioned whether the former were of regal origin (cf. *Hist.* III, 426, where I have suggested that they may in fact date from the Twelve Tables); and, although the king probably did employ an occasional *quaestor parricidii*, there is no reason to think that two were appointed at any one time until the Republican period.

praetors of the regal legion should have assumed the rôle of Rome's chief magistrates at a time when success in war was of such paramount importance. Beyond this, however, little more can be said. If the appeal to Dionysius be excluded – and one cannot ignore the possibility that the reference to the dual command has been introduced into his account purely on the analogy of Republican practice – Bernardi produces altogether four arguments in support of his thesis, none of which can be regarded as truly compelling. He maintains (1) that, as the consuls required a *lex curiata* to be passed in their favour at the time of their election, they must have ante-dated the first use of the *comitia centuriata* as a political assembly in 509 B.C.:⁹² (2) that the name *praetor*, which was borne by the early chief magistrates, suggests an entirely military origin, and thus some direct connection with the Servian reorganization of the Roman army: (3) that the fact of there being two centuries each of *fabri tignarii* and *cornicines* in the Servian system points to an original bipartite division of the army: and (4) that Livy himself implies a pre-Republican origin for the consulship by his statement that the first two consuls were appointed *ex commentariis Servii Tullii*. Of these arguments the first has already been answered by implication in the preceding section; while the second and third are not such as could be regarded as particularly weighty even by the author himself. If it is true that the existence of two centuries of *fabri* and *cornicines* imply a dual command, it is surely preferable to suppose that the second century in each case was added at a time later than the reign of Servius, when the legion was split into two, rather than to posit a purely hypothetical bipartite division of the army for the period prior to the creation of the second legion.⁹³ Again, the name *praetor* would have been a perfectly natural one to apply at any time to a new magistrate whose chief function was to command in war – *prae-ire*, – whether one believes that it was actually coined in 509 B.C., or that it had previously been in common use throughout Latium.⁹⁴ More interesting and worthy of slightly more attention is Bernardi's appeal to the words *ex commentariis Servii Tullii*, an appeal in which he is joined incidentally by several others.⁹⁵ It may be said at once, of course, that, had Livy found any evidence, good or bad, which suggested to him that Roman *praetores* had been appointed in regal times, we should have expected him to introduce them into his account.

⁹² Ath. 1952, 206. As has been noted, much the same type of argument is employed by De Francisci (S.D.H.I. 1944, 159; Arc. Imp. III/1, 62 f.). He, however, dates the first use of the *comitia centuriata* as an electoral assembly to the fifth century, and he can therefore consistently refer the creation of the dual praetorship to a date later than 509 B.C.

⁹³ It should be noted that the creation of a second legion did not involve any increase in manpower (see above, 139). It is not, therefore, unreasonable to assume that this event took place as soon as a permanent division of command proved desirable.

⁹⁴ Compare Mazzarino, o.c., 169 ff. Coli (Regnum, 163 ff.) has suggested that the name of praetor was occasionally born by the Roman king in his capacity as leader of the armed forces of the Latin League. ⁹⁵ Compare Mazzarino, o.c., 182; Voci, art.cit., 84.

But does this allusion to the *commentarii* of Servius imply that he did find such evidence? The view that Livy's adverbial phrase is to be read closely with the particular words *duo consules . . . creati* is, I think, a fallacy. Surely what Livy intended to convey was not that Servius had made provision for the dual magistracy, but that he had prescribed the use of the centuriate assembly as an electoral, or at least a voting, body. *Ex commentariis Servii Tullii* is in fact to be read with *comitiis centuriatis . . . creati*. Once this is realized, there is no further need to consider whether or not the *commentarii* may have been genuine. Livy is merely re-echoing the probably false belief, already expressed in I, 43, that Servius intended the centuriate division to form the basis of a political assembly.

For those who are unwilling to accept the Mommsenian point of view, the only alternative to the line taken by Bernardi and Voci is to reject the entire tradition on the early Republican constitution, and to posit a period between the fall of the monarchy and the emergence of *par potestas*, during which power lay in the hands either of a single magistrate, or of a college of two or more in which one individual was predominant.⁹⁶ Drastic though it is, this is the course which has proved most popular with those who have recently committed their views to print, with the result that the last decade has produced numerous rival reconstructions of early constitutional development, all of them variations upon a single theme. On one point almost all of these scholars are agreed – namely that the magistrate who wielded the greatest power in the state was in fact the *praetor maximus* to whom allusion was made in the *lex vetusta* of Livy VII, 3,5.⁹⁷ They differ, however, in their ideas about the identity of this official and about the precise relationship which he bore to his colleague or colleagues.

Pareti and Arangio-Ruiz are perhaps the least radical, in that they are prepared to admit that from the very beginning of the Republic power rested in the hands of two *praetores*, a *praetor maior* and a *praetor minor*. They depart from the tradition only in their refusal to accept equal collegiality as original.⁹⁸ Five scholars, however – De Francisci, Mazzarino, Guarino, Gintowt, and De Martino – apparently undeterred by the oft-repeated but none the less forceful arguments which have been raised in the past against the doctrine

⁹⁶ It is true that Bernardi himself at one stage attempted to save the traditional view by claiming that *par potestas* and *intercessio* were the outcome of a very early compromise between patricians and plebeians (Rend. Ist. Lomb. 1945–6, 4 ff.). Such a doctrine, however, is belied by the Fasti of the early fifth century, and Bernardi has of course since recanted. For detailed criticism, compare Guarino, R.I.D.A. 1948, 100 ff.; Dell'Oro, La formazione, 139; De Martino, o.c., 184 f.

⁹⁷ De Francisci is an exception to this rule. He believes that the army was originally commanded by a *magister populi*, but, unlike many others, he does not attempt to identify this official with the *praetor maximus*.

⁹⁸ Pareti, o.c. I, 362 ff., Arangio-Ruiz, Storia del diritto romano (Naples, 1950), 30.

associated with the names of Schwegler and Beloch,⁹⁹ see the primitive Republican magistracy as some form of annual dictatorship:¹⁰⁰ while the remainder are influenced to a greater extent by the significance of the superlative in the epithet *praetor maximus*, and are therefore induced to regard Rome's chief magistrate as *primus* within a college whose members were at least three in number. For Hanell the junior *praetores* are to be identified with the *tribuni militum*.¹⁰¹ Others, among them Manni, Gioffredi and Wesenberg, take their cue from De Sanctis, and look upon the *praetor maximus* as one of a group of three praetors originally appointed to command the contingents supplied to the Roman army by the three Romulean tribes.¹⁰²

There is, of course, a corresponding divergence of opinion concerning both the date and the cause of the adoption of the principle of *par potestas*. The most common suggestion is that a change from unequal to equal collegiality was demanded by the creation of a second legion. For De Francisci and Guarino the direct result of this move was the substitution of two praetors for a *magister populi* as commanders-in-chief: for Gioffredi it was the elevation of one of the two *praetores minores* to the status of their former senior. Manni and Wesenberg, on the other hand, see the reason for the change in the assumption of excessive power by the *praetor maximus*, who was as a consequence dislodged by his two inferiors; while De Martino prefers to date it as late as 367 B.C. in an effort to bring it into some sort of connection with the Licinio-Sextian legislation and the patricio-plebeian rapprochement.¹⁰³

This is indeed a formidable array of doctrine; and it is not my intention here, by attempting to expose flaws inherent in each individual point of view, to go over ground which has already been frequently and efficiently covered.¹⁰⁴ Suffice it to remark that, while many of these elaborate and radical reconstructions do no small credit to the imaginative powers of their authors, not one of

⁹⁹ Compare recently Hanell, o.c., 155 f.; Gioffredi, Boll. Comm. Arch. 1943-5, 130; Bernardi, Rend. Ist. Lomb. 1945-6, 2; Ath. 1952, 4 ff.

¹⁰⁰ De Francisci, S.D.H.I. 1944, 159; Guarino, R.I.D.A. 1948, 109 ff.; Gintowt, R.I.D.A. 1949, 385 ff.; De Martino, o.c., 190 ff. It should of course be noted that these scholars hold radically different opinions about the nature of this dictatorship. Guarino deliberately avoids the title *dictator* and speaks of the *magister populi*; but by denying the identity of the dictator and the *magister populi* he runs into difficulties more serious than those which he thereby tries to overcome. That *magister populi* was an alternative, though perhaps earlier, title for the dictator, is confirmed by the fact that his junior colleague was styled *magister equitum*.¹⁰¹ o.c., 179.

¹⁰² Manni, 'Appunti sull' origini di alcune magistrature romane', Mondo Classico IX IX (1939).; Gioffredi, Bull. Comm. Arch. 1943-5; 131 ff.; Wesenberg, Z.S.S. 1947, 319 ff. Wesenberg differs from the others in regarding the *praetor maximus* as a kind of dictator. For the same general view (without detailed discussion), compare Heuss, Z.S.S. 1944, 69; Siber, Röm. Verf., 37. ¹⁰³ Cf. also A.-Ruiz, loc.cit.

¹⁰⁴ For some effective criticism of various theories which have recently been advanced, see Bernardi's article in Ath. 1952 passim.

them can for a moment be regarded as the fruit of what is commonly meant by historical research. Without categorically denying, therefore, that any particular theory could conceivably contain something of the truth, I will be content now briefly to consider what appear to me to be the only two arguments employed by scholars, for which it could reasonably be claimed that there is any solid foundation in the ancient tradition.

The first of these is an argument, already used by Beloch, which is based upon the composition of the first Board of Decemvirs. If the name of T. Genucius Augurinus be excluded from the list as an interpolation, the remaining nine Decemvirs were all men who had previously held the consulship in different years. The fact that none had been the colleague of another is a clear indication, we are told, either that there had only been one supreme magistrate in the preceding years, or at least that one had always wielded greater power than his colleague.¹⁰⁵ Perhaps because so many scholars have remained unimpressed by this reasoning, Gintowt has recently attempted to expose their folly by means of a series of calculations which are designed to illustrate how overwhelming are the mathematical odds in favour of Beloch's thesis.¹⁰⁶ But it is extremely doubtful whether he will succeed in winning more converts than his predecessor. The historian is naturally inclined to distrust such objective standards of probability and to rely more upon his own subjective judgment, and, in view of the nature of his subject-matter, he is surely not unjustified. So many unknowns may have determined the final choice of Decemvirs that it would be rash indeed to reject a universally consistent tradition on the nature of the primitive constitution merely on the strength of an extant list of successful candidates. For other reasons too, however, this argument is very much weaker than those who employ it would make it appear. The case for regarding the name T. Genucius Augurinus as interpolated is undermined, if in fact plebeians were represented in consular office in the fifth century, as Bernardi has urged.¹⁰⁷ And, if it is kept, there is little reason why we should not go further and accept the statement of the annalists that the two Decemvirs, Appius Claudius and T. Genucius, were both consuls-elect for 451 B.C. This possibility would presumably play havoc even with Gintowt's calculations. Again, it may be asked why it was, if the Decemvirs had all been *praetores maximi* or *praetores maiores* in their earlier years of office, that the names of seven of them are recorded second in the consular Fasti.

The second argument to which I refer is, of course, the appeal to the *lex vetusta* of Livy VII, 3,5 – a law written, according to Cincius the antiquarian, in ancient lettering and style, and prescribing *ut qui praetor maximus sit idibus Septembris clavum pangat*. Now we must, I think, accept the view of Hanell and Wesenberg that the inclusion of the term *praetor maximus* in this *lex*

¹⁰⁵ Beloch, o.c. 235. Cf. De Martino, o.c., 191.

¹⁰⁶ R.I.D.A. 1949, 385 ff.

¹⁰⁷ See above, note 1.

implies the one-time existence at Rome of at least three magistrates to whom the epithet *praetor* was applicable:¹⁰⁸ and, further, we must agree, as against Mommsen, that the use of the superlative cannot adequately be explained as a provision against the possibility that in certain years a dictator might be in office on the Ides of September – for, even if a dictator could properly be designated as a praetor, which is very doubtful,¹⁰⁹ it is clear that an official document would have been very much more precise in its specification of particular magistrates. If we concede so much, however, we are not thereby committed to the doctrine that *praetor maximus* was the official title of the chief magistrate of the fifth century. There is another possibility – namely that the *lex* to which Livy refers is to be dated not to the first year of the Republic, as he himself appears to have supposed, but to the comparatively short period after 367 B.C., when there were most certainly three officers at Rome all of whom could be legally styled as praetors. *Praetor maximus* was indeed the natural epithet to be applied at this time to that particular one of the two *praetores maiores*, or consuls, who happened at a given moment to have possession of the *fasces*.¹¹⁰

An obvious objection to such a theory is, of course, that it is directly contradicted by Livy himself, who informs us that by 363 B.C. the yearly rite which had been prescribed by the *lex vetusta* had fallen into abeyance.¹¹¹ But, in view of the fact that Livy VII, 3 is a notoriously ill-constructed and confused chapter,¹¹² it is very questionable whether any weight can be attached to his words. He begins by recounting that 363 B.C. was a year of pestilence, and that it was decided to appoint a dictator to drive the nail because it was remembered that in a previous year the performance of such a rite by a dictator had brought relief from a similar scourge. He then turns quite unaccountably to quote the text of the *lex vetusta*, and to inform us, as if by way of elaboration, that the responsibility for the annual rite, which had once fallen to the consuls, had passed in subsequent time to dictators *quia maius imperium erat*. It is very clear that the chapter is a conflation of material drawn from two entirely independent sources. The first section is possibly based on annalistic records;¹¹³ while the excursus on the *lex vetusta* is almost certainly taken from Cincius,

¹⁰⁸ This is denied, however, by De Martino, o.c., 186. Cf. De Francisci, *Arc. Imp.* III/1, 62; Pareti, o.c., 362 f. ¹⁰⁹ Compare, however, Wesenberg, *Z.S.S.* 1947, 323; Coli, *Regnum*, 164 f.; De Martino, o.c., 192.

¹¹⁰ For a similar view, see Bernardi, *Ath.* 1952, 9 ff. Compare Festus 161 M: *maiores consulem L. Caesar putat dici vel eum, penes quem fasces sint, vel eum, qui prior factus sit*.

¹¹¹ Livy VII, 3, 8. ¹¹² Compare in particular Momigliano, *Bollettino della Commissione Archaeologica LVIII* (1930), 38 ff.

¹¹³ The suggestion that a dictator was sometimes exceptionally appointed to perform the rite even when the consuls were at Rome, in the belief that his superior *imperium* would produce a greater effect, is perfectly reasonable (see below, 107). Compare Livy VIII, 18, 12 for a similar explanation of such an appointment.

as Livy himself indicates. It is, therefore, a reasonable enough suggestion that the episode of 363 B.C. provided the historian with a good opportunity to introduce into his account what Cincius had written in general on the subject of the *clavus annalis*, and that consequently the crucial words *intermisso deinde more digna etiam per se visa res propter quam dictator crearetur*, with which Livy concludes his digression, were inserted to gloss over a contradiction between what appeared to be two independent explanations of the decision to appoint a dictator in that particular year.¹¹⁴ Of course, there remain the deductions of the antiquarian himself to contend with. But can it be said that they amount to very much? Cincius' chief concern was to interpret, and to comment upon, the inscription which was affixed to the wall of Jupiter's temple – an inscription which contained the term *praetor maximus*, which for him can have had little meaning.¹¹⁵ All that he had to help him was (a) the knowledge that a M. Horatius, described by the records as praetor, had planted the first nail, and (b) the tradition that dictators had occasionally performed this ceremony in the fourth century. It is understandable that he should have posited a general transference of responsibility from consuls to dictators, and that he should have accounted for such a development by a to him plausible, but none the less mistaken, identification of the phrase *qui praetor maximus sit*, as it appeared in the inscription, with *qui maximi imperii sit*.

I contend, therefore, that it is reasonable to suppose that the *lex vetusta*, or at least the wording of the law as it appeared in its final form on the temple of Jupiter, was of fourth century origin, and thus that Livy's account of the events of 363 B.C. may be interpreted in a manner which accords perfectly with the traditional portrayal of the nature of the primitive Republican constitution. There is one further circumstance which serves to vindicate this point of view. The Greek expression for 'consul' was στρατηγὸς ὑπατος; and there can be little doubt that these words are a direct transcription of the Latin *praetor maximus*. Is it likely that the Greeks began to write about the affairs of the city of Rome as early as the first half of the fifth century? And, if this really be thought possible,¹¹⁶ should it not be considered strange that the Greeks

¹¹⁴ Beloch (o.c., 38) was probably right when he suggested that the rite did not fall into abeyance until the time of the Second Samnite war, when for the first time both consuls and possibly a dictator too found themselves away from the city on the Ides of September. Hanell (o.c., 135 ff.), on the other hand, is prepared to follow Livy implicitly on this point.

¹¹⁵ Bernardi seems to suggest that the inscription did not in fact contain this term. If it did not, however, it is difficult to understand how the epithet, which could not have had a technical significance after the end of the fourth century, and which was comparatively meaningless to the Romans of the later Republic, could ever have reached Cincius.

¹¹⁶ So Hanell, o.c., 160 f. For the more reasonable view that the translation into the Greek was made towards the end of the fourth century, compare Beloch, o.c., 263 f., Rudolph, N.J. 1939, 161; Bernardi, loc.cit.

should have continued to apply this name in later time to a magistrate who, if the sceptics are right, bore practically no resemblance to his predecessor?

Any claim, then, that these reconstructions of the early constitution derive any positive support from the ancient tradition must be dismissed. It remains now only to ask whether they are none the less justified by the sheer inadequacy of that tradition. What force is there in the contention that the principle of *par potestas* could not possibly have been adopted immediately upon the fall of the monarchy?

First, let us consider the modern explanations of the origin of equal collegiality. Are they in fact any more satisfactory than that which was offered by Mommsen, and which is supported by the ancient sources themselves? De Francisci and Guarino would have us believe that it was the direct outcome of the creation of the second legion. This would be a plausible enough suggestion, if the tradition provided the slightest indication that there was any particular occasion during the fifth or early fourth centuries when such a division of the armed forces of Rome was for the first time urgently demanded by the military situation. In fact, however, it does not; and, as the creation of a second legion does not appear to have involved any increase in total manpower, it appears more reasonable to follow Fraccaro, and to explain the second legion by reference to the dual consulship rather than to explain the dual consulship by reference to the second legion.¹¹⁷ Against De Martino's attempt to account for *par potestas* by the patricio-plebeian compromise of 367 B.C., on the other hand, it could be objected, first, that already by this date the two censors had functioned as equal colleagues for over seventy years, and, second, that in all probability plebeians had held the consular office with some frequency in the fifth century.¹¹⁸ There remains the suggestion that the dual magistracy of equals was a reaction to the assumption of excessive power by one individual. This of course, could be a perfectly rational explanation either of the displacement of monarchy by diarchy, or of the transformation of an unequal into an equal partnership; and it may well be that such changes in states for which they are attested¹¹⁹ are to be accounted for in this very way.

¹¹⁷ See above, 81.

¹¹⁸ Frezza (Studi Solazzi, 511f.) takes a somewhat less radical view. While not committing himself upon the age of *par potestas*, he is content merely to postulate a connection between the events of 367 B.C. and the development of *intercessio*. However, his attempt to distinguish a structural from a functional relationship existing between the principles of collegiality and *intercessio* is unduly legalistic; and his suggestion that the patricio-plebeian compromise resulted in the substitution of a system of reciprocal control for one of reciprocal trust implies a somewhat superficial understanding of fifth and fourth century politics. For good reason the patriciate was opposed to annual plebeian representation in the consulship, but that did not mean that they differed from all plebeians on matters of policy, or indeed that there were not many plebeians with whom they could work in greater harmony than with members of their own caste. ¹¹⁹ Compare Mazzarino, o.c., passim.

But it should be noted that those scholars who suggest that this was the development at Rome are implicitly rejecting one of the principal arguments of the anti-Mommsenian school – the contention that the danger of a reversion to *regnum* could be adequately overcome by the principle of annuality in office alone. In doing so, of course, they are, I think, perfectly justified; for the discontent which was rife at Rome in the years immediately following the fall of the monarchy was such as might well have been turned to advantage by an ambitious consul upon whose activities there was no constant check.¹²⁰ But, if this be admitted, what obstacle remains in the way of accepting the traditional account?

It is here, I think, that we come to the crux of the matter. The basic reason for the almost universal refusal of recent writers to believe that *par potestas* and *intercessio* were original to the Republic is not simply their conviction that these institutions were not necessary as a security against a possible return to *regnum* – for, even if they were right in this, there could be no logical reason for denying that the Romans may none the less have embraced the principle of equal collegiality as an extra, though inessential, precaution. It is rather their total unwillingness to credit the Romans with an ingenuity and foresight which they have failed to find in other peoples at a similar stage in their development. The Rome of 509 B.C. is regarded, to use Bernardi's words, as a 'società primitiva incapace ancora di riflessione teoretica'.¹²¹ It is, of course impossible to refute this contention.¹²² But I would conclude by emphasizing that it is based upon an argument from analogy of a type, which, if widely employed, could only serve to stultify every attempt at true historical research. Analogical arguments can be, and often are, extremely useful as aids to the interpretation of our source material – although even here they must be viewed with caution – but the scholar who is prepared to use them in order to discredit an entire written tradition is in danger of sacrificing history upon the altar of a preconceived philosophy of determinism. For the student of early Rome it is a matter of peculiar concern to discover the secret of her greatness. If he proceeds by first dismissing all that the Roman writers themselves have to impart, and by then reconstructing her history without their aid, and upon

¹²⁰ This is overlooked by De Martino when he argues (o.c., 188) that the chief concern of the Romans in the years following the overthrow of the monarchy was for undivided leadership. This was admittedly sometimes essential – hence the dictatorship. But of greater importance was the need to ensure the implicit allegiance of the magistrates to the aristocracy of which they were members.

¹²¹ Ath. 1952, 17.

¹²² It may of course be agreed that a short period must have elapsed after the fall of Tarquin before the Republican system of government could be devised; but there is no reason why that period should have exceeded a year at the most. It is a plausible suggestion of Lübtow (Z.S.S. 1952, 154 ff.) that the revolution was followed by a somewhat prolonged *interregnum*.

the fixed assumption that the Roman mind and temperament differed in no respect from that of other nations whose achievements have long been forgotten, his chances of success are small indeed!

4. THE ORIGIN OF THE DICTATORSHIP

A similar tendency altogether to discount the testimony of the ancient tradition is displayed in recent attempts to trace the origin of the dictatorship. The doctrine that a dictator was appointed for the first time in 501 B.C. with a view to providing Rome with a short period of strong and united leadership is one which has failed to find favour even with many of those who are prepared to accept the early origin of the dual magistracy. Some, it is true, are conservative enough to retain the dictator or *magister populi* as the creation of the Republic; but the majority to-day prefer to see him as a relic from the regal age. Thus, for Mazzarino and Guarino, among others, he is the *rex* of the Etruscan pattern;¹²³ while for Hanell and Bernardi he is the auxiliary of the *rex*, an official appointed by the *rex* to undertake the command in war in his stead.¹²⁴ Now, it may be said at once that of these two alternatives the latter is somewhat preferable, if only because it does not commit us to a doctrine of evolution, and because it does pretend to provide some account of the development of the dictatorship as an extraordinary office. But does the retrojection of the office of dictator or *magister populi* into the regal period rest upon any sure foundation? I would like here briefly to comment upon three principal arguments which are widely used to support such a thesis.

(a) Mazzarino has recently developed the suggestion that the title 'Mastarna', which was referred by the Emperor Claudius to Servius Tullius,¹²⁵ and which appears in the form 'Macstrna' upon the famous François tomb at Volci, is the Etruscan equivalent of the Latin word *magister*. Accepting the view that Claudius drew upon a genuine Etruscan tradition and that the 'Macstrna' of the tomb was therefore in fact Servius, he has drawn the conclusion that Servius was the first Roman *rex* to bear the title *magister populi*.¹²⁶ Bernardi too has taken a similar line. He adopts the view that Servius was named 'Mastarna' or *magister*, but prefers to believe that the title designated him not as king of Rome, but as the commander-in-chief of his predecessor, Tarquinius Priscus.¹²⁷ Now such reasoning is doubly invalid. In the first place – and here one can do no more than re-echo the sentiments already ably expressed by De Sanctis and Last¹²⁸ – the identification of Mastarna and Servius

¹²³ Mazzarino, o.c., 184 ff.; Guarino, R.I.D.A. 1948, 110 f. Compare Voci, art.cit. 82.

¹²⁴ Hanell, o.c., 191 ff.; Bernardi, Ath. 1952, 25 ff. Compare De Francisci, S.D.H.I. 1944, 156; Meyer, o.c., 39. ¹²⁵ I.L.S. 212. ¹²⁶ o.c., 184 ff. ¹²⁷ Ath. 1952, 27.

¹²⁸ De Sanctis, Storia dei Romani I (Turin, 1907), 375; Last, C.A.H. VII, 391.

Tullius is by no means certain or even probable. The theory of Claudius, whether based upon personal research or drawn from an Etruscan source, can be nothing more than a speculative deduction from the François paintings themselves, which portray the slaughter of a CneF e Tar ↓ unies Ruma ↓ by a Marce Camitlnas and the rescue of a Caile Fipinas by Macstrna within the same series. Provided that the panels illustrate a single succession of events, all that can rightly be induced from them is that a Gnaeus Tarquinius of Rome, who might conceivably have been Tarquinius Priscus, was killed in a conflict with a band of Etruscans, among whom was prominent an individual who bore the title 'Mastarna' – or, if Mazzarino is to be believed, *magister*. But this is not all. What proof is there that Mastarna, whether he be identified with Servius Tullius or not, bore the title in respect of some position which he at some time held at Rome? If it be true, as Mazzarino suggests,¹²⁹ that the name *magister* had penetrated from Latium into Etruria by the sixth century, what is there to prevent us from regarding him as the *magister* of some Etruscan community?

(b) Emphasis is commonly laid by those who date the origin of the dictatorship to the regal age upon two well-known features of the Republican magistracy – the requirement that the dictator should immediately upon his appointment name a *magister equitum*, and the ruling that no dictator should mount a horse without first receiving the sanction of the Senate.¹³⁰ Ernst Meyer, for example, remarks that the ban on mounting a horse must date from a time when cavalry was a new element in war, not yet held in honour. It was not in fact directed against the *magister populi*, but was rather a token of his superior status.¹³¹ Others, again, see the office of *magister equitum* as a relic from times when the *equites* played a more prominent and independent part in warfare than they did at the beginning of the Republic.¹³² Such suggestions may appear plausible enough in themselves; but the crucial question is whether there are other possible explanations of the ban and the *magister equitum* which are consistent with a Republican origin for the dictatorship. Now, it may be argued that it is difficult, and perhaps impossible, to reconcile any purely military aim for such features with the view that the dictatorship was a creation of the fifth century, if only because the regular magistrates of that period were neither debarred from mounting a horse, nor required to appoint a separate commander for the cavalry. But what is there to suggest that their purpose *was* military? Only the fact that the subordinate of the dictator, like himself, bore a military title – and, as both were liable to be called upon at any time to take

¹²⁹ o.c., 188f.

¹³⁰ Plutarch, Fabius 4; Livy XXIII, 14; Zonaras VII, 14.

¹³¹ o.c., 38f.

¹³² Compare Mazzarino, o.c., 196ff. His attempt to explain the ban on mounting a horse as imposed in the interest of the equestrian aristocracy of regal times is less happy. For, if, as he believes, the *magister populi* and the champion of the hoplite forces was the king himself, it is difficult to understand why he should have agreed to any restriction of his authority.

command in the field, this counts for very little. If, on the other hand, we adhere to the tradition and accept (a) that the Romans embraced the principle of collegiality as a precaution against a return to *regnum* in the first year of the Republic, and (b) that they later saw the necessity for one-man rule in an emergency, the requirement that a dictator should appoint a *magister equitum* can be explained perfectly well from a constitutional standpoint. It may have been nothing more than an expedient whereby monarchical control could be reconciled with collegiality. The fact that a dictator had a junior colleague was of no practical significance, for it did not in any way lessen his authority: in theory, however, it was all-important, for it served to support the legal fiction that the principles of the new constitution were not being abandoned. Similarly with the ban on mounting a horse, which can only be satisfactorily explained if viewed in close conjunction with the appointment of the *magister equitum*. It too could have been largely symbolic in function – symbolic of some limitation, however slight and unimportant, imposed upon the otherwise absolute authority of a single magistrate.¹³³

(c) It is claimed that the magical procedure involved in the appointment of a Roman dictator is of considerable antiquity, and, further, that his direct nomination (*dictio*) by the consul is indicative that he was at one time appointed in like manner by the *rex*.¹³⁴ This argument is equally unconvincing. The fact that a dictator was not 'created' by the consul before the *comitia* is to be explained quite simply either by the rule that a greater *imperium* could not be 'created' by a lesser, if this had as yet been formulated,¹³⁵ or, as is also possible, by the need for a speedy decision in an emergency; and, as Bernardi has suggested,¹³⁶ it is precisely the absence of a popular vote which may well account for the magical processes associated with his assumption of power.¹³⁷

The principal arguments adduced by those who would claim the dictatorship as a regal institution, then, have little force in themselves. But they are in any case more than offset by the almost unanimous verdict of the sources that, whereas the *fascēs* of the king himself had numbered only 12,¹³⁸ those of the

¹³³ Alföldi (Reiteradel, 18 n.16) suggests that there was a political reason for the ban, and that it was imposed in order to safeguard the position of the *magister equitum*. But he does not explain how it protected the *magister equitum* (who was surely none the less subject to the dictator's command), or for that matter why there was a *magister equitum* at all.

¹³⁴ Compare De Francisci, S.D.H.I. 1944, 160; Meyer, Welt als Gesch. 1953, 147.

¹³⁵ On the distinction between *dictio* and *creatio*, see now Tibiletti, *Studia Ghisleriana* 1950, 369f.

¹³⁶ *Ath.* 1952, 5 n. 6.

¹³⁷ There is also some force in the plea of Adcock (J.R.S. XXXVIII (1948); 106) that, had the dictator been at one time the auxiliary of the *rex*, he would never have been held responsible for the appointment of his own *magister equitum*.

¹³⁸ Livy I, 8,2; Dion. Hal II, 29, III, 61-2; Cicero, *De Rep.* II, 31; Appian, *Syr.* 15; Lydus, *De Mag.* I, 8; Zon. VII, 8.

dictator totalled 24.¹³⁹ Of course, the simple fact that the Republican dictator carried 24 *fascēs* cannot be said to prove that there had not earlier been dictators or *magistri populi* who carried only 12 or possibly even fewer. What it does prove, however, is that the purpose and function of the Republican dictator-

¹³⁹ Polybius III, 87,6; Dion. Hal. X, 24; Plutarch, Fabius 4; Appian, Bell. Civ. I, 100; Dio LIV, 1,3. It is true that Lydus (I, 37) credits the dictator with only 12 lictors, while Appian (loc.cit.) attributes 24 to the king; but both these discrepancies can be very simply explained by the strong tradition that the dictatorship was the temporary revival of *regnum*. While Appian emended the regal figure on the strength of that of the dictator, Lydus may be supposed to have taken precisely the opposite course. Lydus' total has recently been defended by K. H. Vogel, however, in an article which he has devoted to a consideration of the relationship between the *fascēs* and the *imperium* (Z.S.S. 1950, 84f., 93ff. Cf. Siber, Röm. Verf. 106f., who follows him in most of his arguments.). His case depends largely upon the doctrine that *imperium* was in the early Republic an essentially objective concept, and that the distinction between the *imperium domi* and the *imperium militiae* was original. The tenure of *imperium* within each of the two spheres was symbolized by a group of 12 *fascēs*, with the result that 12 urban *fascēs* were borne by either the consul who had the turn of power, or the dictator, or the *praefectus urbis*, while another 12 were carried by the magistrate who at any given time held the command in the field. At a later stage, according to Vogel, when the consuls began to be engaged frequently on separate campaigns, *imperium* took on a more personal character. It came to be regarded as something which pertained not to a sphere of command, but to an individual; the number of holders of *imperium* consequently increased; and the tenure of *fascēs* developed into an "Ehrenrecht", with the result that their number varied according to the estimated worth of the magistracy to which they were awarded. Thus the dictator, who, like the consuls themselves, originally held only 12 *fascēs*, whether within or without the *pomerium* (Lydus), ended up in the later Republic by holding 24 (Polybius, Plutarch, Appian). Vogel's argument, however, is not conclusive:

(1) Neither Festus 50 M – cum imperio est dicebatur apud antiquos cui nominatim a populo dabatur imperium – nor Tacitus VI, 11 – ne urbs sine imperio foret in tempus deligebatur qui ius redderet . . . – can be said to prove that *imperium* was at any time an objective concept. There is nothing in the first passage which suggests that *imperium* in any one sphere could be conferred on only one individual; while it would be rash to lay much stress upon the contracted phraseology of the second, even if it had been written by one whose pronouncements on Republican matters were worthy of more serious attention.

(2) The possibility that the *rex* and early magistrates appointed a *praefectus urbis* during their absence from the city does not indicate that there was a distinct *imperium domi* at that time – only that it had always been thought advisable to make adequate provision for the defence and administration of the city.

(3) The ancient references to the *auspicium urbanum* (Gellius XIII, 14,1; Varro, L.L. V, 143) and to the procedure which attended a magistrate's departure from the city are totally irrelevant to the question of *imperium* (see below, 107ff.).

(4) The system of the turn may, as Vogel argues, have been of early origin, but it did not imply a strict division of spheres of command; for there were certain consular privileges and responsibilities even within the city which the magistrate without the *fascēs* retained. I conclude that there is no indication in the sources that the concept of *imperium* underwent a change during the course of the Republic, and that there is consequently no reason to deny that the *fascēs* had always signified the extent of magisterial *imperium* by their number.

ship were entirely original to the Republic, and that the principal motive of the Romans of the fifth century for resorting to it was the desire for a stronger leadership than the consuls could provide.¹⁴⁰ This being so, those who would try to establish that dictators or *magistri populi* were known in regal Rome, like those who follow Beloch in regarding the dictatorship as the first ordinary magistracy of the Republic, cannot possibly hope to do more than prove that the names applied to the later and more familiar extraordinary magistrates were not original. This is, of course, a perfectly reasonable supposition – though it is perhaps more probable that the names were borrowed from Latium than from early Rome;¹⁴¹ but it tells us nothing about the nature and function of the dictatorship in the fifth and fourth centuries, and it goes no way at all towards discrediting the testimony of the ancient authorities concerning its origin.

Equally unsatisfactory are the theories of scholars who, while they reject the traditional account, still prefer to seek for an explanation of the extraordinary nature of the dictatorship in the history of the early Republic. Of these perhaps the most familiar is the view, expressed by Momigliano some twenty years ago,¹⁴² that the magistracy came into being when, after the Cassian treaty, the Romans found it required of them to provide a single commander-in-chief for the armies of the Latin League in alternate years. It apparently still has its supporters;¹⁴³ but, although it is very possible that the title of dictator (as opposed to *magister populi*) may have been introduced to Rome through some such contact as this with the Latins after the treaty, the suggestion that the magistracy itself was so late in origin is belied by the tradition, and it appears now to have been abandoned by Momigliano himself.¹⁴⁴ Another very much more heterodox proposal is that of Dell'Oro, who sees in the dictatorship the magistracy of a patricio-plebeian federation, called occasionally into being in order to combat the separatist tendencies of the patriciate.¹⁴⁵ But this is even less acceptable. It is dependent upon the wholly erroneous doctrine of the *foedus*,¹⁴⁶ and it is in flagrant conflict with a tradition

¹⁴⁰ Strangely enough Bernardi stresses the significance of the dictator's 24 lictors (Ath. 1952, 5), although he at the same time retrojects the *magister populi* into the regal age. It is true that for him the *magister populi* had always been a substitute in an emergency for two praetors; but can he really believe that even this extraordinary auxiliary of the *rex* held twice as many *fasces* as the *rex* himself?

¹⁴¹ I cannot discuss this possibility here. For the view that Rome borrowed the title, though not the form, of the dictatorship from Latium, compare Altheim, R.G. II, 144f.; De Martino, o.c., 223; Coli, Regnum 162f.; Bernardi, Ath. 1952, 25f.; R.S.I. 1954, 15.

¹⁴² Bollettino della Comm. Arch. LVIII (1930), 31ff.

¹⁴³ Compare Gioffredi, Boll. Comm. Arch., 1943-5, 131.

¹⁴⁴ Journal of Roman Studies XXXVI (1946), 198.

¹⁴⁵ La formazione, 130ff.

¹⁴⁶ The suggestion that the *plebs* was originally outside the citizen body is now almost universally rejected (cf. Last, J.R.S. 1945, 30ff.), and Dell'Oro's elaborate reconstruction

which represents the dictator as an object of fear to plebeians, and certainly not as their friend.¹⁴⁷ Why, if Dell'Oro is correct, should every dictator of the fifth century have been a patrician? And why should a dictator have connived at the election of two patrician consuls for the year 349 B.C.?¹⁴⁸

The fact that so many scholars have felt bound to resort to such improbable reconstructions in an effort to account for the dictatorship of the Republic naturally leads one to enquire what is so unacceptable about the verdict of the annalists. But for a thorough and effective criticism of their point of view one looks in vain. Admittedly, the tradition on the origin of the dictatorship is somewhat less consistent than that on the events of 509 B.C. and the establishment of the consular office; and there are minor discrepancies between the various authors concerning the name of the first dictator and the precise motive for his appointment. But all are agreed at least that he was nominated approximately ten years after the fall of the monarchy, and that his appointment was occasioned by the existence of some kind of threat to the security of the new Republic. Why, then, should we not believe them? It is perfectly reasonable to suppose with Dionysius that the threat in question was in fact an internal threat, and that it was the Senate's aim by deciding for the appointment of a dictator to bring into being a magistrate who would both provide a stronger lead to the aristocracy and command greater respect among the lower classes.¹⁴⁹ Once the means had been devised of temporarily conferring all but absolute authority upon a single magistrate who was distinct from the two consuls, the use of the dictatorship for the purpose of establishing a unified or more competent command in the field, when this was thought desirable, and indeed for rendering possible the performance of certain functions which for one reason or another the consuls may at any time have been prevented from performing, was but the natural sequel.

of early Republican history does nothing to make it appear more probable. For an attack on the doctrine of the *foedus* from a new angle, compare Gioffredi, S.D.H.I. 1945, 22 ff.

¹⁴⁷ The probably spurious M'. Valerius of 494 B.C. is admittedly described by the annalists as friendly towards the plebeians, in common with all other Valerii – although even he is said to have been elected *adversus plebem* (Livy II, 30,5, 31,8; Dion. Hal. VI, 22). That Dell'Oro should attach any importance to this manifestly distorted Antian tradition only testifies to the extravagance of his arguments.

¹⁴⁸ Livy VII, 24,11. ¹⁴⁹ Dion. Hal. V, 70,4 – against Livy (II, 18) who ascribes the dictatorship to the fear of a Latin war. The view that the internal situation was responsible was upheld at one stage by Bernardi (Rend. Ist. Lomb. 1945–6, 17 ff.). His suggestion that extremists such as the Fabii were deliberately not appointed in the fifth century is a good one; although it should be emphasized that, while the Senate may have been careful not to exasperate the recalcitrant plebeians by their choice of dictator, they must none the less have hoped through him to compel obedience. As has been noted, the fact that the dictator and his colleague bore military titles is of little significance, if it may be assumed that they were also expected to take command in the field when the occasion arose. The *dictator seditionis sedandae causa* was probably a later development.

There is but one remaining matter upon which some comment should perhaps be made. The annalistic tradition represents the dictator as peculiarly free from *provocatio* and the tribunician *intercessio*; and its word on this matter has been accepted even by many of the more sceptical of scholars.¹⁵⁰ One must agree in this case, however, with those who dismiss this account as entirely misleading.¹⁵¹ If, as I have myself argued elsewhere,¹⁵² the *ius provocationis* was not recognized even against consuls until as late as 300 B.C., dictators were certainly not the only magistrates who enjoyed unrestricted powers of *coercitio*; while, if the tribunician power was revolutionary in character, as is now commonly agreed,¹⁵³ the right of veto could not possibly have been restricted within set limits. Wherein then lay the dictator's superior strength in dealing with the rebellious masses? To this question there are, I think, two possible answers. It may simply be said that the decision to appoint a dictator was tantamount to the proclamation of a state of emergency, and that this in itself, provided that the expedient was used sufficiently rarely, made an effective appeal to the patriotism of the average Roman. But one would probably be justified in going further than this, and in stressing the possible impact upon the poorer classes of the peculiar mysteries which attended the dictator's assumption of power. The dictator was admittedly no *rex* reincarnate.¹⁵⁴ The aristocracy saw to that. But it is not too much to believe that the very nature of his appointment, which took place at dead of night and without popular approval, suggested some form of direct divine sanction, and so armed him with a personal *auctoritas* which often enabled him to compel obedience from even the most militant of plebeians.¹⁵⁵

5. THE NATURE OF IMPERIUM

The frequent allusions which have been made in preceding sections to *imperium* demand that some consideration should here be given to the recent controversy about the essential nature of this concept as an attribute of the Republican magistrate. The traditional view of Mommsen and Leifer on this

¹⁵⁰ Compare Hanell, o.c., 192; Meyer, o.c., 125; De Martino, 6.6., 191.

¹⁵¹ So Siber, 'Provocatio', Zeitschrift der Savigny-Stiftung, 1942, 379ff.

¹⁵² Hist. III, 427f.

¹⁵³ For the latest discussion of this matter, compare the articles cited above, note 1.

¹⁵⁴ This is appreciated by De Martino (o.c., 227), who rightly lays emphasis upon the principle of unequal collegiality.

¹⁵⁵ It is perhaps not too much to suppose that the aristocracy deliberately encouraged this attitude to the dictator – hence the appointment of a dictator to drive the nail during a pestilence (Livy VII, 3.3). Compare Livy VIII, 18.12: itaque memoria ex annalibus repetita in secessionibus quondam plebis clavum ab dictatore fixum alienatas discordia mentes hominum eo piaculo compotes sui fecisse.

matter is familiar.¹⁵⁶ For them the *imperium* of the consul was the absolute power of the Roman *rex*. It was by its very nature unlimited and indivisible, something to which the idea of particular competence was wholly foreign. This doctrine, which derives its chief support from the unanimity of ancient writers in speaking of the consular *imperium* as identical with that of the *rex*¹⁵⁷ as well as from the fact that in the early Republic at least *imperium* was peculiarly the attribute of the supreme magistrates, still has many notable adherents:¹⁵⁸ and, in the opinion of some, it has received something of a boost of late from the novel suggestion of Wagenvoort that the word *imperare* is derivative in the first instance not from *in-parare*, but from *in-parere*, and that *imperium* is consequently to be regarded as a magical and original personal authority of the successful leader.¹⁵⁹ Nevertheless, as has always been widely recognized, such a view presents difficulties, not perhaps fatal, but undoubtedly serious. It appears to be something of a contradiction, for example, to admit that certain Republican laws, which asserted popular rights such as the *ius provocationis*, imposed limits upon the consul's freedom to exercise his *imperium*, and yet to deny that they in any way established or defined spheres of competence. Again, an even greater problem is raised by the development in the Republican era of specific grades of *imperium*. If *imperium* was indefinite and indivisible, how are we to account for the concept of an *imperium maius*?

This last question is one upon which Rudolph, a faithful follower of Mommsen, has attempted to throw some light. He has tried to trace the origin of the distinction between the *imperium maius* and *imperium minus* to an accident rather than to a deliberate act, an accident which resulted from the decision to create a third praetor in 367 B.C. From the first, Rudolph tells us, this praetor was the equal colleague of the consuls, but he was none the less forbidden by law to leave the city for more than ten days at a stretch:¹⁶⁰ and, because the military functions of the magistrates assumed a greater importance in the years which followed, this restriction of locality soon developed into what came to be regarded as a restriction of competence.¹⁶¹ However, this defence of the theory of universal *imperium* is not really convincing; for there seems little reason to deny that the third praetor was *minor* to his two senior colleagues from the very first day of his appointment. After all, he was never eponymous; he does not appear to have enjoyed the *ius intercessionis* against the consuls;

¹⁵⁶ Mommsen, *Röm. St.* I³, 22 ff.; Leifer, *Die Einheit des Gewaltgedankens im röm. Staatsrecht* (Leipzig, 1914).

¹⁵⁷ Cf. Livy IV, 2,8; 3,9; VIII, 32,3; Dion. Hal. VI, 35; VII, 35; IX, 41; X, 33.

¹⁵⁸ In particular to-day De Francisci (cf. *Studi Albertario* I, 399 ff., *Arc. Imp.* III/1, 31 f.)

¹⁵⁹ *Roman Dynamism*, 59 ff. Cf. Meyer, *Welt als Gesch.* 1953, 138 ff. For a criticism of this doctrine, see De Martino, *o.c.*, 78 ff.

¹⁶⁰ Cicero, *Philippics* II, 31.

¹⁶¹ *N. J.* 1939, 145 ff.

and his *fascēs* are known to have numbered not 12, but at the most 6.¹⁶² And what is to be said of the *imperium maius* of the dictator, which dated from the early fifth century? During the dictator's period of office there were normally three others who held *imperium* at Rome – his *collega minor*, the *magister equitum*, and the two consuls of the year – all of whom were subject to his overriding authority.¹⁶³ Furthermore, as if to symbolise his superior responsibility and his right to issue instructions to the ordinary magistrates, he was awarded 24 *fascēs*. This would be very hard to explain, if the 12 *fascēs* which the consuls had inherited from the *rex* some ten years earlier had been regarded as the symbol of absolute and unlimited power.

It is because the traditional view is fraught with such difficulties as these that scholars have recently been so concerned to advance a more acceptable thesis. Clearly, only two courses are open to them. One is to retain *imperium* as the basis of regal authority, while interpreting that authority as something which was itself strictly limited. The other is to argue that *imperium*, at least as a concept governing power over Roman citizens, was original to the Republic. The former alternative is embraced both by Wesenberg (who attempts none the less to defend a form of the theory of universal *imperium*),¹⁶⁴ and by De Martino, who sees *imperium* as a unitary authority created to counteract the centrifugal force of the primitive *gentes*.¹⁶⁵ But it must suffice here to remark that it is a doctrine which cannot well stand up to the extremely cogent and convincing arguments of Coli as developed in his study of *regnum*. More promising and in many ways more attractive are the suggestions of those who disclaim any necessary connection between *imperium* and the power of the Roman king; and it is to a consideration of their views that I intend to devote the remainder of this section.

The pioneer in this field was Heuss. For him *imperium* was a concept of Etruscan origin, designating simply a power of military command, and as such it was assumed by the consuls of the early Republic. Originally, therefore, these magistrates enjoyed powers of *coercitio* only in the military sphere; and it was not until the fourth century that, with the active encouragement of the Senate, they began to abuse their authority by employing them *domi* against the private citizen.¹⁶⁶ Now, as is so often the case with those whose chief concern is to discredit a well-established doctrine, Heuss here almost certainly goes too far. Wholly to reject a tradition which unanimously represents the early consular authority in the home sphere as akin to that of the *rex*, and which records numerous attempts on the part of the magistrates of the fifth century

¹⁶² Vogel maintains that originally the praetor had 12 *fascēs*, when the consuls were away from the city (art. cit., 96f.). Compare, however, above, note 139. For the six *fascēs* of the praetor, see De Sanctis, *Rivista di Filologia*, 1929, 6ff.

¹⁶³ For the relationship between the dictator and the consuls, see recently Last, *J.R.S.* 1947, 159.

¹⁶⁴ *Z.S.S.* 1953, 58ff.

¹⁶⁵ *o.c.*, 81ff.; 353ff.

¹⁶⁶ art.cit.

to restrain recalcitrant and insubordinate citizens,¹⁶⁷ is a bold step indeed. It is not justified by Heuss' argument that the consuls must originally have owed their appointment to a *lex* which in later time was regarded as essential only for the assumption of a military command; for, as we have already seen,¹⁶⁸ the *lex curiata* is not necessarily any older than the centuriate vote, and it may well have referred not to *imperium* as such, but to the *ius auspicii*. And in any case, it is incredible, as I have remarked elsewhere,¹⁶⁹ that in the troubled times which followed the fall of the monarchy Rome should have failed to invest the chief magistrates of her young constitution with powers of jurisdiction within the city itself. But, while all this may be admitted, it cannot be denied that Heuss has ably prepared the way for further and more effective attacks upon the Mommsenian position. In his suggestion that the conferment of *imperium* upon the Roman consul may not have been the necessary corollary of his holding 'das Oberamt', but rather of his being the official who bore the responsibility for commanding the Roman armies, he may well be right. If *imperium* was originally nothing more than an authority to take command in the field, the fact that it was conferred in a greater or less degree upon dictators, praetors, promagistrates, and even *privati*, presents no difficulties whatsoever.

After Heuss the next to write upon the subject at length was Voci.¹⁷⁰ Like several others,¹⁷¹ he appears to accept much, though not all, of Heuss' doctrine. Following Mazzarino in dating the most significant constitutional revolution in early Rome to the first part of the sixth century, he proposes that *imperium* was introduced with the appearance of the first Etruscan *rex* or *magister populi*. Servius Tullius and his immediate successors governed Rome simply by virtue of their power of command over the new hoplite army. Later, in the early years of the fifth century, these *magistri* were displaced by two praetors who had previously been concerned with jurisdiction, and, when this happened, the civil powers which the praetors retained came to be covered, along with their newly gained military authority, under the general title of *imperium*. Much of the detail in this account – the suggestion that the prototypes of the Roman consuls were responsible for the administration of justice under the Etruscan monarchy, for example, and the view that the Latin *rex* had given place to the rule of the *magister populi* at the time of the Servian reforms – has already been discussed and found unacceptable.¹⁷² But none the less Voci, like Heuss, has some important contributions to make. He reinforces the contention that

¹⁶⁷ Compare Hist. III, 417f., where I have suggested that the incidents in question are in fact authentic, although the annalists may have been guilty of misinterpretation.

¹⁶⁸ See above, 144ff. For an attack upon this argument of Heuss from another point of view, see De Francisci, Studi Albertario I, 407ff.

¹⁶⁹ Hist. III, 414f. For a refutation of Heuss' arguments from *provocatio*, see De Francisci, Studi Albertario I, 421ff.

¹⁷⁰ Studi Albertario II, 67ff.

¹⁷¹ Compare Alföldi, Reiteradel 86; Bernardi, Ath. 1952, 37.

¹⁷² See above, 93, 101ff.

the *imperium* was not the power of the primitive *rex* over his subjects by drawing a valid distinction between the concepts of *imperium* and *auspicium*, and by pointing to the fact that it was the latter, and not the former, which was said to have reverted to the *patres* during an *interregnum*.¹⁷³ And – what is perhaps more important – he makes the very proper suggestion that the concept of *imperium*, which in essence covered only the power of command in the field, might well have been extended from very early in the Republic to embrace any other particular competences of the magistrate who exercised that power of command. According to Voci, then, it is possible to maintain with perfect consistency (a) that *imperium* was introduced to Rome comparatively late as a power of military command, and (b) that the use of the word to designate the full authority of the Roman consuls does not necessarily imply that they lacked the *ius coercionis* against the citizens of Rome.

But there remains one crucial question, to which some answer must be given if a theory such as this is to be generally endorsed. If *imperium* was not the authority of the *rex* over his subjects, and if it was originally entirely military in extent, how did it ever come to be an attribute of the consuls? Voci's answer we have seen to be unacceptable, and Bernardi's view that *imperium* was originally held by military auxiliaries of the *rex* is little better.¹⁷⁴ However, the way to at least one solution, which has the merit of according perfectly with the ancient tradition, has recently been pointed by Coli.¹⁷⁵ It is his suggestion that *imperium* at Rome was originally an occasional attribute of the *rex*, by virtue of which he held authority not over his own subjects, but over allied peoples in a military league. Whereas the power of the *rex*, *qua rex*, was an unlimited personal authority derivative from Jupiter, *imperium* was a concept entirely foreign to monarchy as such, and borne by kings only in their capacity as leaders of a people other than their own. It was limited to command in the field; it could be granted in measure large or small; and – most important – it was conferred by the will of all over whom it was to be extended. Coli finds particular support for his thesis in a distinction between the *regia ornamenta* and the *insignia imperii* (the lictors and *fasces*).¹⁷⁶ The former were given in later time as tokens of recognition to foreign kings; but they were not inherited by the Republican magistrate, and they were never worn by him except on the occasion of a triumph – the one occasion, it may be noted, when the magistrate appeared in public as the servant of Jupiter.¹⁷⁷ The *insignia imperii*, on the other hand, were carried by the consuls, and they were not afforded to foreign royalty. The contrast is a notable one, and by the stress

¹⁷³ art. cit. 71 ff. I cannot agree with Voci, however, that the *rex* was *primus inter pares* within the aristocracy. On this point see Coli, *Regnum*, *passim*.

¹⁷⁴ Compare above, 154 ff.

¹⁷⁵ *Regnum*, 153 ff.

¹⁷⁶ For the *insignia imperii*, see Livy I, 17,6; II, 7,7; XXVIII, 24,14; Cicero, *De Rep.* II,55; *De Har. Resp.* 3.

¹⁷⁷ Compare Levi, *Rend. Ist. Lomb.* 1938, 109 ff.

which he lays upon it *Coli* perhaps does more than any other to discredit the theory of universal *imperium*. If, then, he is correct in his suggestion that *imperium* was at one time the military authority of the king over the allied armies of Rome, the use of the word to designate the powers, military and civil, of the Roman magistrate becomes very much more easy to explain. It can be accounted for very simply by the fact that the relationship which the latter bore to his electors, whether they be viewed as private citizens or as soldiers under his command, was entirely analogous to that which had obtained between the *rex* and his fighting allies. Both the *rex*, as the chosen leader of a military league, and the consul, as the elected representative of the *populus*, exercised *imperium* over subjects who had willingly submitted themselves to their control.

Between them, then, these three scholars have succeeded in proving that the concept of *imperium* is at least susceptible of an entirely different interpretation from that provided by Mommsen and Leifer¹⁷⁸. They have shown that it is possible to formulate an alternative theory concerning its origin and nature which does no violence to the evidence of the ancient sources, and which at the same time has the advantage of escaping the criticisms to which the traditional view is so obviously exposed. If they are right, *imperium* was not a formal concept from which each and every power of the magistrate could be deduced; it was simply the sum total of a definite number of functions conferred at the institution of the Republic.¹⁷⁹

6. THE REFORM OF THE COMITIA CENTURIATA

I come finally to a later period in Rome's constitutional development, and to the vexed question of the third century reform of the *comitia centuriata*. During the war years this subject was allowed to rest; but the silence of scholars was not of long duration, and since 1949 the appearance of some new full-length discussion of the matter has been almost an annual event. This revival of interest is undoubtedly to be explained by the publication of the

¹⁷⁸ The view that *imperium* was of Republican origin at Rome is also expressed by v. Lübtow, Z.S.S. 1952, 157ff., who fails to make a clear distinction between *imperium* and *auspicium*, and so speaks of the former as being conferred upon the magistrates by divine sanction. However, if *imperium* was foreign to the *rex*, who was a direct representative of the gods, and was peculiar to the Republican magistrate, who was the representative of the *populus*, it is more natural to regard it with *Coli* as an entirely secular concept.

¹⁷⁹ De Francisci objects that we have no record of any laws defining the powers of the consuls (Studi Albertario I, 402). But after all it was the aristocracy, and not the *populus*, which was responsible for framing the new constitution at the outset. As the consuls were probably originally given power to do most of the things which the *rex* had done in fact, it is natural that the only legislation known to us should be restrictive.

now famous inscription from Magliano, which records part of a *rogatio* of A.D. 19 concerning the conferment of posthumous honours upon Germanicus, and which outlines in detail the voting procedure employed by the select assembly of senators and *equites* which played a prominent part in the appointment of consuls and praetors in the early Principate. As the voting units in this Imperial assembly were termed *centuriae*, it is only natural, in view of the wholly unsatisfactory nature of the evidence relating to the reformed *comitia centuriata*, that scholars should have been tempted to look to the detailed account of the inscription for some indication of Republican practice.

The first to use the Tabula Hebana in this way was Tibiletti, who published an article in 1949 in which he argued that the inscription lent considerable weight to the much-abused doctrine of Mommsen concerning the nature of the third century reform.¹⁸⁰ His argument has since been restated for the most part by Gallo,¹⁸¹ and his conclusions have been endorsed by such notable scholars as Last, De Visscher, and Ernst Meyer.¹⁸² As is generally known, Mommsen agreed with Pantagathus to the extent that he accepted the total 373 as that of the permanent centuries in the reformed organization, and posited a co-ordination between tribes and centuries which extended throughout all five classes: but, in order to account for Cicero, *De Republica* II, 39, and certain other indications in the ancient tradition that the number of centuries remained at 193, he postulated that the 280 centuries of classes II to V were grouped by lot at the time of voting to form but 100 voting units.¹⁸³ In the earlier part of this century, this reconstruction was widely condemned on the ground that the procedure of sortition was impracticable and unnecessarily complicated. But, as Tibiletti has now rightly pointed out, it was just such a procedure – whereby members of permanent units were grouped together to form a smaller number of voting units having a corporate existence only in so far as those who composed them voted into one urn – which was prescribed by the *lex Valeria Cornelia* of A.D. 5. The only difference lay in the fact that the permanent units in the Imperial assembly were tribes, whereas those in Mommsen's reformed *comitia centuriata* were centuries. It is suggested, therefore, that the system of grouping to be found in the assembly of the Tabula Hebana is to be accounted for solely by Augustus' desire to preserve or restore Republican forms,¹⁸⁴ and that as a consequence it provides a valuable clue to the nature of the third century reform.

This opinion is one which on the surface appears extremely attractive. But the reasons for its acceptance are perhaps not quite so compelling as its authors

¹⁸⁰ Ath. 1949, 210ff.

¹⁸¹ S.D.H.I. 1952, 127ff.

¹⁸² Last, *Gnomon* 1950, 36; De Visscher, *Revue historique de droit français et étranger* XXIX (1951), 36f.; Meyer, *Welt als Gesch.* 1953, 144.

¹⁸³ Röm. St. R. III, 270ff.

¹⁸⁴ Compare Suetonius, *Div. Aug.* 40.2: *comitiorum quoque pristinum ius reduxit; Res Gestae* 8.5: *multa exempla maiorum exolescentia iam ex nostro saeculo reduxi.*

seem to believe. In support of this contention, and at the risk of a certain amount of repetition, I would here make a few relevant points which were included in an article I published some three years ago.¹⁸⁵

(1) The Tabula Hebana undoubtedly proves that the Mommsenian system of sortition was practicable, but it does not dispense with the objection that such a system was unnecessarily complex. Even if, as Gallo has now proposed,¹⁸⁶ the purpose of the reform was largely administrative, and could only be served by the co-ordination of all five classes with the tribes, there can have been no demand for the procedure of grouping. The result would have been much the same politically, if 70 centuries had been allocated to the first class and 35 centuries each to the remaining four.

(2) Even if one is prepared to admit that Augustus' concern to preserve Republican forms was responsible for the procedure outlined in the Tabula Hebana, there is very little reason to believe that the particular element of former practice which he had felt himself constrained to preserve was the elaborate system of grouping permanent units by lot. Indeed, this possibility seems even less likely when it is considered that the senators and *equites* whom these provisions concerned were all men who belonged to the first class of the census, and therefore to centuries which even on Mommsen's view would never have been grouped together in the Republican *comitia centuriata*.

(3) Other good reasons can be suggested for the introduction by Augustus of just such a system. His assembly was intended to play a major part in the election of the major magistrates. Is it not reasonable to suppose, therefore, that the Republican elements which he wished to preserve were (a) voting by centuries as opposed to tribes, and (b) the co-ordination of centuries with tribes, which on any view of the reform had extended to at least the first class of the earlier *comitia centuriata*?¹⁸⁷

In the light of these considerations, it is difficult to escape the conclusion that the principal appeal of Tibiletti's arguments rests in the simple fact that a system of voting suggested for the reformed *comitia centuriata* by Mommsen was almost precisely that which has now been proved by epigraphical evidence to have been employed by the Romans of a later age. Now this is certainly not coincidence, but to admit this is not to say that Mommsen's theories were

¹⁸⁵ A.J.P. 1953, 9ff. For further criticism of Tibiletti's view, see Schönbauer, *Studi Albertario* I, 711f. ¹⁸⁶ art. cit., 151ff.

¹⁸⁷ A fuller discussion of this matter will be found on p. 13 of my article. Gallo (art.cit., 145f.) finds it difficult to believe that Augustus could have failed to copy the Republican system of voting exactly. But was this necessarily possible? If Tibiletti is wrong and there had been no grouping of centuries in the Republican assembly, Augustus could admittedly have instructed the senators and *equites* to vote in their 66 permanent centuries; but it is possible that 66 votes would have been too large a number for his purpose — and in any case there would then have been no co-ordination between centuries and tribes, as in the first class of the *comitia centuriata*.

correct. Because he misinterpreted the evidence of Livy I, 43,12 as indicating that the number of centuries in the reformed assembly totalled 373 – and this on Tibiletti's admission¹⁸⁸ – he had somehow to reconcile this figure with the 193 of Cicero, *De Republica* II, 39. Augustus was faced with a similar task in practice – the task of creating a relatively small number of centuries out of a group of people divided into as many as 33 tribes. It is perfectly understandable that they should have both reached the one possible solution. Once it be admitted that Mommsen was mistaken in his interpretation of the evidence, the case for accepting his conclusions must be considerably weakened.

More recently Schönbauer has called the same *Tabula Hebana* in support of a doctrine which had passed into even more general disrepute than that of Mommsen – the doctrine that in the reformed organization the division by classes was wholly subordinated to the division by tribes, and that the number of centuries within the classes consequently totalled only 70, one of seniors and one of juniors from each of the 35 tribes. The view is revived in a slightly modified form. According to Schönbauer the classes were not entirely abolished: they continued to exist and indeed to have some importance, in that within each single century the members of each of the five classes were called separately to register their votes. The point of contact with the *rogatio* of A.D. 19 is to be found in the fact that the senators and *equites* of the Imperial assembly who had been allotted to a single century were instructed to proceed to the voting urns successively according to their *ordo*. This was the element of Republican practice which on Schönbauer's view Augustus sought to preserve – an element which of course had no effect upon the result of the voting.¹⁸⁹

It may be noted, first, that this appeal to the *Tabula Hebana* is open to very much the same sort of criticism as that of Tibiletti. Before it could be said with any confidence that Augustus' prescriptions concerning the order in which members of the same *centuria* were to record their votes were modelled in principle upon Republican practice, it would have to be convincingly shown, first, that Augustus could have had no other motive for making the arrangements which he did, and, second, that the legislator of the third century B.C. had a perfectly good motive for keeping the class distinction alive. But such a thesis could not possibly be upheld. Augustus' decision to allow senators to record their votes before *equites* who were allocated to the same *centuria* is surely nothing more than an example of political tact. By allowing members of his new *ordo equestris* to take part in the *destinatio* of consuls and praetors at all, he ran the serious risk of giving considerable offence to senators. It was only natural that he should have attempted to lessen the blow by affording them open recognition of their seniority in the order of the vote. The third century legislator, on the other hand, had no such reason to keep the distinction

¹⁸⁸ Compare art. cit., 228-9. Tibiletti's interpretation of Livy I, 43, 12 is undoubtedly the most attractive yet offered. ¹⁸⁹ Hist. II, 31 ff.; Studi Albertario I, 699 ff.

between the property-classes in being. Membership of a class was important principally for the powers and privileges which it conferred, and not as a mark of rank. If once those powers had been withdrawn, any further differentiation between the classes in the sphere of voting would have been entirely without value or meaning.

It is necessary, however, to examine Schönbauer's views on their own merits, particularly as they are based upon some rather startling interpretations of the relevant evidence. His chief difficulty is clearly to reconcile the suggestion that there were only 70 centuries within the classes after the reform with the account of Cicero, *De Rep.* II, 39. This he attempts to do by a somewhat drastic transposition of phrases in the text.¹⁹⁰ The *ratio* which Cicero describes is, he agrees, the *ratio* of the reformed organization; but he believes that it is Cicero's purpose here not merely to detail the new arrangement, but to draw a comparison between the old and the new with a view to laying emphasis upon the more timocratic structure of the former. According to the generally accepted reading of the text, the all-important sentence may be loosely translated: 'You are aware that the present arrangement is such that the *centuriae equitum* with the *sex suffragia*, and the centuries of the *prima classis* together with that of *fabri tignarii* make up a total of 89. If only 8 of the 104 centuries which are left is added to this figure, a majority is reached.' According to Schönbauer's reading, on the other hand, the general sense would be something as follows: 'To-day the total number of centuries is 89. In the past, however, at least 8 had to be added to this figure before even a majority could be reached; and even this total of 97 which constituted the majority was smaller than the number of centuries which could be provided at that time by the *centuriae equitum* with the *sex suffragia*, the *prima classis*, and the *fabri tignarii* (99 in the original organization)'. Now the text of Cicero is admittedly far from perfect. But a reconstruction so violent and arbitrary as this would require considerable justification; and there are few who would be prepared to accept as valid the reasons which Schönbauer adduces for rejecting the version which is now commonly approved. Why, he asks, if Cicero's meaning is what is usually believed, does he pick upon 89 and 8 as two figures which add up to the majority of 97, rather than any other two? The answer is surely perfectly obvious. It had been a notable feature of the Servian system that the centuries of the *equites* and those of the first class (with which had voted one century of *fabri*) had themselves constituted a majority of the total. Cicero is consequently concerned to indicate to what extent the influence of this social group was weakened after the reform. They did not retain their majority, he is telling us; but at least they were only eight votes short of it.

For the rest, Schönbauer says little to counter the destructive criticism which has been levelled against theories similar in principle to his own by De

¹⁹⁰ Suggestions for a reconstructed text are made in Studi Albertario I, 721 f.

Sanctis.¹⁹¹ In Cicero, *Philippics* II, 82 – *Ecce Dolabellae comitiorum dies. sortitio praerogativae; quiescit. renuntiatur; tacet. prima classis vocatur; renuntiatur. deinde, ita ut assolet, suffragia. tum secunda classis vocatur, quae omnia sunt citius facta quam dixi. confecto negotio bonus augur . . . 'alio die' inquit.* – he dispenses with the second *renuntiatur*, denies that *suffragia* refers to the *sex suffragia* of *equites*, and translates: 'The lot is drawn for the *centuria praerogativa*; he is silent. The result is announced; he is silent. The first class is called, and, as is the custom, records its vote. Then the second class is called . . .'. But it is still forceful to argue with De Sanctis that *ut assolet* has some point only as applied to the order, as opposed to the mere act, of voting. And does not the ablative absolute *confecto negotio* imply that Antonius did not intervene until the voting necessary for the determination of the result of the election had been completed?¹⁹² Even less convincing is Schönbauer's claim to deduce the subordination of classes to tribes from the fact that Livy sometimes describes the prerogative century with such phrases as *tribus Galeria iuniorum*,¹⁹³ particularly as he chooses to ignore a very much more decisive passage from the same author, where we are told specifically that in 169 B.C. the censor Claudius was condemned by eight centuries of *equites* and *multae aliae primae classis*.¹⁹⁴

His attempt to find a motive for a reform such as he proposes is no more successful. He suggests that the measure was sponsored not by the *nobilitas* or by the middle-classes, but by the wealthy landowners who recorded their votes in the centuries of class I. Under the Servian system these individuals had found themselves tied to the *equites equo publico*, who had been the first to vote, and whose votes had had to be added to their own before a majority could be reached. Their answer, we are told, was to clamour for the abolition of voting by classes; for, as they far outnumbered all the members of the lower classes put together, they knew that they could thus assure themselves of carrying with them two-thirds of all the centuries without support from any other quarter (64 centuries, representing the rural tribes, out of a total of 89). This thesis is built up on a number of highly dubious hypotheses. Can we really be sure, for example, that the flow of booty into Rome in the third century had been so great as to render membership of class I higher than that of the other four together? And what indications do our authorities provide that there was at this time a serious clash of interest between the *nobilitas* and the landowners of class I? Certainly, there were differences of opinion on major political issues

¹⁹¹ *Storia dei Romani* III 1 (Turin, 1916), 358 ff.

¹⁹² Cicero's words – *omnia sunt citius facta quam dixi* – do not imply that only two parts of a single century had voted, as Schönbauer believes (*Studi Albertario* I, 715). They are meant to emphasize the fact that the result of the election was a foregone conclusion and that votes could therefore be counted with the utmost speed.

¹⁹³ Cf. Livy XXIV, 7, 12; XXVI, 22, 4; XXVII, 6, 3.

¹⁹⁴ Livy XLIII, 16, 14.

at Rome, as, for example, concerning the proper attitude to be adopted towards Carthage; but the opposing points of view were usually voiced by groups within the governing oligarchy itself, and they were no doubt indirectly expressed in the voting of equestrian and first class centuries alike. Let us assume for the moment, however, that Schönbauer is correct in his basic assumptions. Is it conceivable that the first class voters should have been so short-sighted as to attempt to improve their voting strength by to all intents and purposes abolishing the distinction between the classes? It can hardly have escaped them that they might soon be in a decided minority within the classes, and that they would then find themselves in a very much weaker position than they were at present.¹⁹⁵ Surely, then, it would have been less risky and equally effective for them merely to have deprived the *equites* of their prerogative vote, and to have relied for the future upon a certain support from 20 centuries of the second class. Again, if the landowning classes had previously been constantly thwarted and had been unable to secure representation in office, how did they manage to ensure that the reform was carried? Schönbauer recognizes this as a difficulty for the theory of Pantagathus, and, as if to dispose of it himself, he points out that in his view the reform would actually have raised the proportion of votes in the hands of the *equites* from one eleventh (18 out of 193) to one fifth (18 out of 89). But such statistics are irrelevant. Either the reform was carried in the interest of the *nobiles* or it was not; and, if it was not, why did they allow it to pass?¹⁹⁶

Other attempts to interpret the reform have been made in recent years by Dell'Oro and by myself. Dell'Oro has suggested that the number of centuries assigned to each class after the reform was 35, and that the distinction between seniors and juniors was therefore completely abandoned:¹⁹⁷ while I have argued for the view that the co-ordination of centuries with the tribes was extended only to the second class, with the result that 70 centuries were assigned to class I and 35 to class II.¹⁹⁸ Short of remarking that Dell'Oro does considerable violence to the small amount of ancient evidence which we do possess,¹⁹⁹ I

¹⁹⁵ Schönbauer himself admits that a change in the distribution of wealth was precipitated by the Second Punic War (Hist. II, 49; Studi Albertario I, 737). Incidentally, he does not explain why an assembly which on his view was controlled thereafter by classes II-V should have persisted in continuing the rule of the *nobilitas*.

¹⁹⁶ Schönbauer believes that Flaminius was responsible, but, as he admits, he could have done nothing without the consent of his colleague in the censorship. Compare also below, 119. ¹⁹⁷ La Parola del Passato, 1950, 137ff. ¹⁹⁸ A.J.P. 1953, 1ff.

¹⁹⁹ Dell'Oro is alone to-day in referring the *ratio* of Cicero, De Rep. II, 39 to the original Servian organization. In order to do this he has to translate *equitum centuriae cum sex suffragiis* as "the equestrian centuries with their six votes", and to reduce the supernumerary centuries from the five of the tradition to three! Moreover, his suggestion that the distinction between seniors and juniors was completely abolished is decidedly belied by Livy's references to prerogative centuries during the Hannibalic War as *tribus . . . iuniorum* (cf. above, n. 193). For a more detailed criticism of this view, see Gallo, art.cit., 136.

do not intend here to repeat what I have already written elsewhere or to involve myself in argument on points of detail. After all, to reach a decision as to the precise number of centuries allocated to each class after the reform is of comparatively minor importance. What really matters is that we should be able to determine the general effect which the measure had upon the distribution of interest within the assembly: and it is somewhat encouraging that on this question at least there are signs to-day of an increasing measure of agreement. Apart from Schönbauer and Dell'Oro, all who have recently expressed an opinion about the reform are unanimous in their view that after the third century a majority could be reached within the *comitia centuriata* without reference to the vote of any centuries lower than those of class II. If they are right, it would seem to follow that the reform could not well have been carried, as has so often been suggested, in the interests of the middle class proprietor. Who then was responsible? In my recent article I have argued at some length that the reform, of which the principal feature was the application of the tribal group vote to the centuriate assembly, was effected by the *nobilitas* itself, with a view to restricting the growing influence of the wealthy trader who was enrolled in the urban tribes.²⁰⁰ I now see that my opinion is shared in principle by both Gallo and Ernst Meyer, while within the last two years archeology has produced a further scrap of evidence which can be claimed to provide some corroboration. A fragment of an *elogium*, believed to be that of Q. Fabius Maximus, has been found at Brindisi. In the first line stand the words *primus senatum legit et comiti..*; and Vitucci, arguing with some force that the *comitia* concerned are the *comitia centuriata* of Rome, has restored the verb *ordinavit*.²⁰¹ It may be, then, that this inscription at last provides some clue as to the identity of the author of the famous measure. If so, it could not be more instructive. The man indicated is not the enigmatical C. Flaminius, who has been variously interpreted as the champion of almost every social group at Rome; it is his arch-enemy and the most conservative member of the governing oligarchy.

²⁰⁰ Such a view is dismissed by Schönbauer (*Studi Albertario* I, 710) simply on the ground that the great majority of those enrolled in class I must have been landowners. This I would not attempt to deny. But how many of these landowners found it possible or convenient to put in a regular attendance at the *comitia*? Compare A.J.P. 1953, 23 ff.

²⁰¹ *Intorno a un nuovo frammento di elogium*, *Rivista di Filologia* XXXI (1953), 54 ff.

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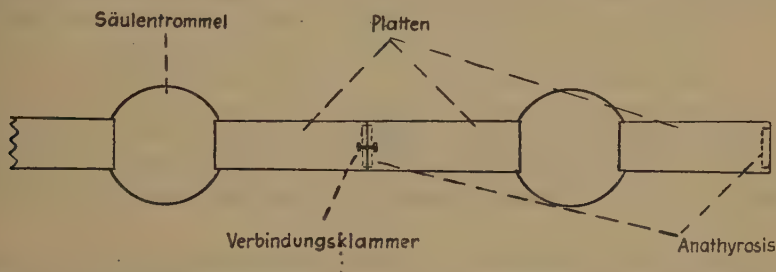
E. STUART STAVELEY

MISZELLE

DER SOGENANNT E GESETZESCODE VOM JAHRE 410 V. CHR.

Bei der im Archontat des Eukleides (a. 403) veranstalteten Gesetzesrevision wurde, wie Lysias berichtet, ein gewisser Nikomachos mit der Bearbeitung des Opferkalenders betraut¹. Eine ganze Reihe von Fragmenten dieses Opferkalenders sind bei der Agoragrabung der amerikanischen Schule zu Athen wieder zum Vorschein gekommen².

Dieser Opferkalender, der in dem seit a. 403 offiziell gebräuchlichen ionischen Alphabet geschrieben ist, bildete einen Teil des Gesetzescode, der in der Königsstoa in Form einer Wand aufgestellt war. Die Wand selbst war, wie sich aus den Fragmenten ergibt, nichttragend und setzte sich aus einer Reihe von wohl mannshohen, mindestens 0,55 m breiten und 0,143/0,095 m starken Platten zusammen, die an der rechten und linken Seite eine Anathyrosis und an der Oberseite zwei Ausnehmungen für je eine Klammer auf-



weisen, durch die die einzelnen Platten miteinander verbunden waren³. Die Platten waren mit der Unterseite direkt auf den Untergrund d. h. wohl den Fußboden der Stoa aufgesetzt⁴. Mindestens vier von ihnen wurden von den Opferfasten eingenommen⁵.

Auf der Rückseite der Platten befindet sich nun ein zweiter, im attischen Alphabet abgefaßter Text, bei dem es sich einmal um ein Gesetz, zum anderen aber wieder um einen

¹ Lys. 30, 4f.

² IG. II² 1357ab. Agora Inv. Nr. I 727 (alle bei Oliver, *Hesperia* 4, 1935, 5ff.). Frg. C (Vs.) = Agora I 687 + 1026ab. Frgt. E. Frgt. F = Agora I 4310 (alle bei Dow, *Hesperia* 10, 1941, 30ff.). Agora I 251 (bei Meritt, *Hesperia* 3, 1934, 46 Nr. 34). IG. I² 845. – Die Identifizierung der Fragmente wird Oliver verdankt.

³ Zur Beschreibung vgl. Oliver a. O. Anathyrosis zeigen IG. II² 1357ab, Agora I 727, Frgt. F, Agora I 251. Ausnehmung für eine Klammer zeigen Agora I 727, Frg. F. Die Höhe der Platten läßt sich einmal daraus erschließen, daß der verlorene Teil von col. I Agora I 727 (Vs.) einen Teil der im Thargelion und alle im Skiophorion darzubringenden Opfer enthielt (vgl. Miss Jeffery, *Hesperia* 17, 1948, 107 Anm. 75), zum anderen daraus, daß die an der Oberseite angebrachten Klammern nicht sichtbar gewesen sein können. Die Minimalbreite der Platten gibt IG. II² 1357ab. Stärke: 0,143 = Frg. F. 0,117 = IG. II² 1357ab, Agora I 727. 0,095 = Agora I 251, Frg. C.

⁴ Frg. A und D (vgl. S. 125 Anm. 4).

⁵ Agora I 727, Frg. F und Agora I 251 gehören drei verschiedenen Platten an (vgl. die Stärke). Vor Agora I 727 stand eine weitere Platte der Opferfasten, die weder mit Frg. F noch mit Agora I 251 identisch ist.

Opferkalender handelt¹. Dieser Text, der im Folgenden mit R bezeichnet wird, gehört dem Schriftcharakter nach in die Zeit von 410–403 v. Chr. und ist von Oliver einem a.410–405 geschaffenen Gesetzescode zugeschrieben worden².

Diese Identifizierung des Textes beruht auf folgenden zwei Zeugnissen:

1. Lysias berichtet von einer in den Jahren 410–405 erfolgten Gesetzesrevision³.
2. In dem Dekret des Teisamenos über die Durchführung der Gesetzesrevision vom Jahre 403 heißt es, daß die Gesetze auf der Wand aufgezeichnet werden sollten, wo sie auch vorher aufgezeichnet worden wären, auf der Wand der Stoa, wie uns Andokides bezeugt.

And. 1,82 ff. ἐψηφίσασθε ... ἀναγράψαι ἐν τῇ στοᾷ τούτους τῶν νόμων οἱ ἄν δοκίμασθῶσι. καὶ μοι ἀνάγνωθι τὸ ψήφισμα. ΨΗΦΙΣΜΑ. ἔδοξε τῷ δήμῳ· Τεισαμενὸς εἶπε... τοὺς δὲ κυρουμένους τῶν νόμων ἀναγράφειν εἰς τὸν τοῖχον, ἵνα περ πρότερον ἀνεγράφησαν...

Es steht nun fest, daß der Text R kurz vor dem Jahre 403 aufgezeichnet worden ist; weiterhin ist gesichert, daß es sich bei dem Text R um einen Teil eines Gesetzescode handelt. Wenn also in dem letzten Jahrzehnt des fünften Jahrhunderts nur zwei Gesetzesrevisionen stattgefunden hätten, nämlich a.410–405 und a.403, so wäre die Identifizierung des Code R mit dem Code vom Jahre 410/405 zwingend; das Dekret könnte im Hinblick darauf, daß die Wand einen kurz vor 403 fertiggestellten Code aufweist, nicht anders gedeutet werden als: die Gesetze sollen auf der Wand aufgezeichnet werden, wo sie auch schon a.410–405 aufgezeichnet worden sind.

In der Tat aber wurden im letzten Jahrzehnt des fünften Jahrhunderts nicht nur zwei, sondern drei Revisionen veranstaltet. Die dritte – bisher völlig außer Acht gelassene – Gesetzesrevision erfolgte im Jahre 404, unter den Dreißig Tyrannen. Die Belege dafür lauten:

1) Ar. AP 35 οἱ μὲν οὖν τριάκοντα ... τοὺς τ' Ἐφιάλτου καὶ Ἀρχεστράτου νόμους ... καθεῖλον ... καὶ τῶν Σόλωνος θεσμῶν ὅσοι διαμφισβητήσεις εἶχον... οἷον περὶ τοῦ δοῦναι τὰ ἑαυτοῦ ᾧ ἂν ἐθέλῃ κύριον ποιήσαντες καθάπαξ· τὰς δὲ προσοῦσας δυσκολίας εἰάν μὴ μανίων ἢ γήρων ἢ γυναικὶ πειθόμενος (cf. Dem. 46, 14)... ὁμοίως δὲ τοῦτ' ἔδρων καὶ ἐπὶ τῶν ἄλλων.

2) Schol. Aesch. 1.33 οἱ λ' τύραννοι ... τὴν πάτριον πολιτείαν ... καταλύσαντες ἐλυμήναντο τοὺς Δράκοντος καὶ Σόλωνος νόμους. ἀπολαβὼν οὖν ὁ δῆμος τὴν ἐλευθερίαν εἴλετο πολίτας κ' τοὺς ζητήσοντας καὶ ἀναγράφοντας τοὺς διεφθαρμένους τῶν νόμων. καὶ ἐψηφίσαντο καινοὺς νόμους εἰσφέρειν ἀντὶ ἀπολωλότων ἐπ' ἄρχοντος Εὐκλείδου.

3) Dio Chrys. 21,3 οὐκοῦν δικαίως Ἀθηναῖοι νομοθέτην αὐτὸν (Kritias sc.) εἶλοντο ἐπὶ γε τῷ μεταγράψαι τοὺς παλαιοὺς νόμους, ὃς οὐδένα αὐτῶν ἔλιπεν.

4) Xen. hell. 2,3,50 ff Kritias ... εἶπεν ... ἔστι δὲ ἐν τοῖς καινοῖς νόμοις τῶν μὲν ἐν τοῖς τρισηλίους ὄντων μηδένα ἀποθνήσκειν ἄνευ τῆς ὑμετέρας ψήφου (cf. A. AP 37).

5) Xen. mem. 1,2,31 Kritias ... ὅτε ... νομοθέτης μετὰ Χαρικλέους ἐγένετο ... ἐν τοῖς νόμοις ἔγραψε λόγων τέχνην μὴ διδάσκειν.

¹ IG. I² 843. Agora I 727 (Rs.) (alle bei Oliver a. O.). Frg. A = Agora I 591. Frg. B = Agora I 945. Frg. C (Rs.). Frg. D = Agora I 590 (alle bei Dow a. O.). Agora I 251 (Rs.) (bei Meritt a. O.). IG. I² 844.

² Oliver a. O. Zustimmung Ferguson, Classical studies presented to E. Capps 144 ff. (mir nicht erreichbar); Miss Jeffery, Hesperia 17, 1948, 107 ff.; Hignett, A history of the Athenian constitution 17 f. und 302; Harrison JHS 75, 1955, 30 ff.

³ Lys. 30, 2–4.

6) Dem. 24,90 εἰ Κριτίας εἰσέφερε τὸν νόμον, οὐκ ἂν ἄλλον τρόπον οἶμαι γράψαντ' εἰσηνεγεῖν ἢ τοῦτον.

Aus diesen Zeugnissen geht hervor, daß die Dreißig nicht nur neue Gesetze erlassen (Nr. 4, 5, 6), sondern auch eine umfassende Revision aller Gesetze vorgenommen haben (Nr. 1, 2, 3, 4), bei der u. a. aus dem Testamentengesetz die Willensklausel entfernt wurde¹.

Mit diesem Nachweis, daß kurz vor dem Jahre 403 nicht nur eine, sondern zwei Gesetzesrevisionen veranstaltet worden sind, ergibt sich aber, daß die Worte τοὺς δὲ κυρουμένους τῶν νόμων ἀναγράφειν εἰς τὸν τοῖχον, ἵνα περ πρότερον ἀνεγράφησαν mehrdeutig sind. Sie können sowohl auf eine a.410/405 als auch auf eine a.404 erfolgte Aufzeichnung der Gesetze bezogen werden. Demgemäß ist der mit diesen Worten gemeinte Code R entweder in die Zeit von 410–405 oder aber in das Jahr 404 zu datieren.

Datierung des Code R.

A) Die untereinander verbundenen, ohne Rücksicht auf die Nahtstellen beschrifteten Platten haben eine Stärke von jeweils 0,143 0,117 und 0,095 m.² Dieser Befund läßt auf folgende Aufstellung der Platten schließen:

Entweder waren sie in mehreren (zumindest drei) verschieden starken Wänden aufgestellt, derart, daß zumindest zwei Platten eine Wand bildeten³.

Oder sie waren in einer Wand aufgestellt, deren Rückseite unsichtbar war und also keine glatte Fläche zu bilden brauchte.

B) Die Platten waren, wie die Fragmente A und D zeigen, einfach auf den Untergrund aufgesetzt. Wenn nun in Betracht gezogen wird, daß die Platten bei einer Höhe von etwa 1,80 m nur ~ 0,12 m stark sind und daher nur eine recht schmale Bodenfläche haben, so erscheint diese Aufstellungsart technisch befremdlich: Da die Platten wegen ihrer Ausmaße unmöglich frei im Raum gestanden haben können, muß ihnen also auf irgendeine Weise ein Halt verliehen worden sein. Zwei Möglichkeiten der Befestigung sind nun in Betracht zu ziehen:

Entweder waren die Platten – jeweils zumindest zu zweit miteinander verbunden – mit der rechten bzw. linken Seite an einer in der Stoa befindlichen Säulenstellung vermittels Einfalzung befestigt, derart, wie es der abgebildete Grundriß verdeutlicht. Bei dieser Lösung ergäbe sich, daß es sich bei der „Wand, auf der die Gesetze aufgezeichnet wurden“, um Wände gehandelt hätte, die von beiden Seiten aus zugänglich gewesen sind.

Oder die Platten waren längs der Wand der Stoa aufgestellt und an dieser befestigt.

Beide Untersuchungen (AB) über die Aufstellung der Platten führen zu folgendem Ergebnis. Bei der „Wand, auf der die Gesetze aufgezeichnet wurden“, handelt es sich entweder um mehrere ungleich starke Wände, die an einer Säulenstellung befestigt und also von beiden Seiten zugänglich waren, oder um eine fortlaufende Wand, die als eine Art Verkleidung längs der Wand der Stoa aufgestellt und an dieser befestigt war. Ein Beispiel dieser Aufstellungsart bieten uns die Bauabrechnungen des Erechtheion aus dem Jahre 408/7⁴.

¹ Die diesen Zeugnissen scheinbar widersprechenden Nachrichten des Xenophon (Hell. 2, 3, 11) und Diodor (14, 4, 1): τὰ . . . περὶ τῆς νομοθεσίας ἀνεβάλοντο beziehen sich auf die Verzögerung der „Verfassungsgesetzgebung“, von der auch Aristoteles AP 35 spricht: τὰ μὲν ἄλλα τὰ δόξαντα περὶ τῆς πολιτείας παρεώρων. Die Gründe der Revision sind in anderem Zusammenhange zu behandeln.

² Vgl. S. 123 Anm. 3.

³ So wohl Dow a. O.

⁴ Vgl. Stevens-Patton, The Erechtheum 370ff.

Eine Entscheidung dieser Alternative ermöglicht nun das Fragment F.

Die Vorderseite dieses Fragmentes ist mit einem Opferkalender im ionischen Alphabet beschriftet. Anathyrosis und Ausnehmung für eine Klammer zeigen, daß hinter dieser Platte eine weitere folgte. Da F zudem im Schriftcharakter und in der Plattenstärke den übrigen Fragmenten gleicht, handelt es sich auch bei ihm um einen Teil der „Wand“ und nicht etwa um eine einzelne Inschrift.

Wichtig ist nun, daß die bei den anderen Fragmenten mit dem Code R beschriftete Seite bei diesem in seiner ursprünglichen Stärke erhaltenen Fragment wie bei den Bauabrechnungen vom Erechtheion rauh gepickt ist. Demnach hat seine Rückseite verdeckt, d. h. an einer Wand gestanden.

Mit diesem Befund ist die Frage nach der Aufstellung der Platten entschieden. Sie waren als eine Art Verkleidung längs der Wand der Stoa angeordnet und an dieser befestigt. Auf ihre genaue Stärke brauchte man deshalb keine Rücksicht zu nehmen, da nur eine Seite der Platten sichtbar war.

Aus diesem Ergebnis folgt nun aber, daß im 4. Jahrhundert der Code R unsichtbar gewesen ist. Da er jedoch aufgezeichnet worden ist, so hat er einmal die Stellung gehabt, die im 4. Jahrhundert der Code des Eukleides hatte. Demnach sind die vor dem Jahre 403 mit dem Code R beschrifteten Platten a.403 aus ihren Verbänden gelöst, gewendet und auf der jetzt dem Inneren der Stoa zugekehrten „Rückseite“ mit den a.403 revidierten Gesetzen beschriftet worden.

Dieser Befund ist nun keineswegs befremdlich, wenn man folgendes in Betracht zieht: Sowohl aus dem Dekret des Teisamenos als auch aus dem Bericht des Andokides geht hervor, daß a.403 ohne Rücksicht auf den bereits bestehenden Code R alle Gesetze revidiert und aufgezeichnet worden sind¹. Diese Nachrichten werden durch die Untersuchungen

¹ And. I, 81–85 ἐπειδὴ δ' ἐπανάλθετε ἐκ Πειραιέως ... ἐψηφίσασθε δοκιμάσαντες πάντας τοὺς νόμους εἴτ' ἀναγράψαι ἐν τῇ στοᾷ τούτους τῶν νόμων οἱ ἂν δοκιμασθῶσι. καὶ μοι ἀνάγνωθι τὸ ψήφισμα. ΨΗΦΙΣΜΑ. ἔδοξε τῷ δήμῳ, Τεισαμενός εἶπε· πολιτεύεσθαι Ἀθηναίους κατὰ τὰ πάτρια· νόμοις δὲ χρῆσθαι τοῖς Σόλωνος ... χρῆσθαι δὲ καὶ τοῖς Δράκοντος θεσμοῖς, οἷοιπερ ἐχρώμεθα ἐν τῷ πρόσθεν χρόνῳ. ὁπόσων δ' ἂν προσδῇ τοῖςδε ἡρμένιοι νομοθεταὶ ὑπὸ τῆς βουλῆς ἀναγράφοντες ἐν σανίσι ἐκτιθέντων πρὸς τοὺς ἐπὶ νόμους σκοπεῖν τῷ βουλευμένῳ καὶ παρδιδόντων ταῖς ἀρχαῖς ἐν τῷδε τῷ μηνί. τοὺς δὲ παραδιδόμενους νόμους δοκιμασάτω πρότερον ἢ βουλή καὶ οἱ νομοθέται οἱ πεντακόσιοι, οὓς οἱ δημόται εἴλοντο, ἐπειδὴ ὁμωμόκασιν. ἐξεῖναι δὲ καὶ ἰδιώτῃ τῷ βουλευμένῳ εἰσιόντι εἰς τὴν βουλήν συμβουλευεῖν ὅ τι ἂν ἀγαθὸν ἔχῃ περὶ τῶν νόμων. ἐπειδὴ δὲ τεθῶσιν οἱ νόμοι, ἐπιμελείσθω ἡ βουλή ἢ ἐξ Ἀρείου πάγου τῶν νόμων, ὅπως ἂν αἱ ἀρχαὶ τοῖς κειμένοις νόμοις χρῶνται. τοὺς δὲ κυρουμένους τῶν νόμων ἀναγράφειν εἰς τὸν τοῖχον, ἵναπερ πρότερον ἀνεγράψαν, σκοπεῖν τῷ βουλευμένῳ.

ἐδοκιμάσθησαν μὲν οὖν οἱ νόμοι ... κατὰ τὸ ψήφισμα τοῦτ', τοὺς δὲ κυρωθέντας ἀνέγραψαν εἰς τὴν στοάν. ἐπειδὴ δ' ἀνεγράψαν ...

And. I, 89 ὅπότ' οὖν ἔδοξεν ὑμῖν δοκιμάσαι μὲν τοὺς νόμους, δοκιμάσαντας δὲ ἀναγράψαι ...

Zum Sphismas des Teisamenos bemerkt Hignett a. O. 301: "There is an obvious inconsistency between the earlier and the later halves of the decree, since the former seems to be concerned merely with the addition of necessary supplemental legislation to the pre-existing code ..., but the duty of the Areopagus to ensure the observance of the laws by the magistrates manifestly refers to all laws, and therefore ἐπειδὴν τεθῶσιν οἱ νόμοι must do the same. Moreover, the reference to τοὺς κυρουμένους τῶν νόμων in the last sentence suggest a general revision of the existing laws in which some were expected to be rejected." Ähnlich heißt es bei Harrison a. O. 33: "More serious is the fact

über die gefundenen Fragmente bestätigt: Der Opferkalender vom Jahre 403 ist keine Fortsetzung oder Ergänzung, sondern eine „Wiederholung“ des Opferkalenders R¹. Mit der Gesetzesrevision vom Jahre 403 war also der Code R überflüssig geworden und konnte daher getrost zerstört werden.

Es erhebt sich aber jetzt die Frage, warum im Jahre 403 der Gesetzescode R, der ja erst kurz zuvor geschaffen worden war, schon wieder zerstört wurde. Eine Lösung dieser Frage ist nur möglich, wenn wir einmal die Frage stellen, weshalb im Jahre 403 alle Gesetze revidiert und aufgezeichnet wurden, obwohl doch erst in der Zeit von 410–405 eine umfassende Gesetzesrevision veranstaltet worden war.

Wie Lysias berichtet, wurde Nikomachos a. 410 beauftragt, die Gesetze des Solon aufzuzeichnen. Die Auslieferung des Manuskripts der revidierten Gesetze erfolgte zu der Zeit, als Athen εις τὰς μεγίστας συμφοράς κατέστη. Frühestens also zur Zeit der Katastrophe von Aigospotamoi, im Hochsommer des Jahres 405, konnte mit der Publikation des Code auf Stein begonnen werden.

Lys. 30, 2 προσταχθὲν ... αὐτῷ ... ἀναγράψαι τοὺς νόμους τοὺς Σόλωνος ... ἐξέτη τὴν ἀρχὴν ἐποιήσατο ... εἰς τοῦτο δὲ κατέστημεν ὥστε ἐκ τῆς τούτου χειρὸς ἐταμεινόμεθα τοὺς νόμους· καὶ οἱ ἀντίδικοι ἐπὶ τοῖς δικαστηρίοις ἐναντίους παρείχοντο, ἀμφοτέρω παρὰ Νικομάχου φάσκοντες εἰληφέναι. ἐπιβαλλόντων δὲ τῶν ἀρχόντων ἐπιβολὰς καὶ εἰσαγόντων εἰς τὸ δικαστήριον οὐκ ἠθέλησε παραδοῦναι τοὺς νόμους¹ ἀλλὰ πρότερον ἢ πόλις εἰς τὰς μεγίστας συμφοράς κατέστη, πρὶν τοῦτον ἀπαλλαγῆναι τῆς ἀρχῆς.

Eine genauere Datierung ergibt sich nun aus folgender Stelle. Es heißt bei Lysias 30, 10 ἐπειδὴ... ἀπολομένων τῶν νεῶν ἡ μετὰ στάσις ἐπράττετο, Κλεοφῶν τὴν βουλὴν ἐλοιδορεῖ... Σάτυρος δ' ὁ Κηφισιεύς βουλευόντων ἔπεισε τὴν βουλὴν δῆσαντας αὐτὸν παραδοῦναι δικαστήριον. οἱ δὲ βουλομένοι αὐτὸν ἀπολέσαι, δεδιότες μὴ οὐκ ἀποκτείνωσιν ἐν τῷ δικαστήριον, πείθουσι Νικομάχον νόμον ἀποδείξαι ὡς χρὴ καὶ τὴν βουλὴν συνδικάζειν. καὶ ὁ πάντων οὗτος πονηρότατος οὕτως φανερῶν συνεστασίασεν, ὥστε τῇ ἡμέρᾳ ἣ ἡ κρίσις ἐγένετο ἀποδείξαι τὸν νόμον.

Dieser Vorwurf, mag er auch eine üble Verzerrung sein, hat nun zur Voraussetzung, daß auch zur Zeit des Prozesses gegen Kleophon die Gesetzesrevision noch nicht abgeschlossen war, sondern daß immer noch der Zustand herrschte, in dem kein Mensch sich mehr zwischen der Masse alter und neuer, oft einander widersprechender oder nur miteinander konkurrierender Gesetze durchfand.

that Andocides is quite explicit that all laws are to be subjected to scrutiny, whereas a simple interpretation of the decree suggests that it is only additional laws that are to be scrutinised ... I should myself prefer a compromise. I agree with Ferguson that ... there was a presumption that not much alternation would be needed in the existing texts. I should, however, be reluctant to believe that all possibility of revising these texts was ruled out. This possibility was, I suggest, provided for by the clause of the decree which allows any citizen to come before the boule and suggest improvements in the laws. There is no ground for restricting "the Laws" in this clause to the additional laws." Einen Beleg für die Revision aller Gesetze bietet das Intestaterbgesetz bei Dem. 43, 51.

¹ So Miss Jeffery a. O. 107ff., Harrison a. O. 31. Ähnlich schon Ferguson a. O. 150f.

² Daß mit παραδοῦναι τοὺς νόμους genau wie mit παραδιδόντων im Dekret des Teisamenos die Übergabe des Manuskripts (Leukomata) mit den revidierten Gesetzen gemeint ist, hat schon Frohberger (Ausgew. Reden des Lysias III 1871, 34 und 163) erkannt. Vgl. auch Harrison a. o. 30.

Dieser Prozeß gehört nun aber schon, wie aus Lysias 13,5ff hervorgeht, in die Zeit der Friedensverhandlungen mit Sparta¹. Es läßt sich daher vermuten, daß die 410–405/4 revidierten und im Manuskript vorliegenden Gesetze mit Ausnahme des schon a.409/8 auf einer vor der Stoa stehenden Stele veröffentlichten Blutrechts² infolge der am Ende des Krieges herrschenden Wirren überhaupt nicht mehr aufgezeichnet worden sind.

Wenn nun a.403 eine Syngraphe d. i. ein νόμος περί τῆς ἀναγραφῆς sc. τῶν νόμων bestimmte, daß in den neuen Opferkalender die in den Kyrbeis und ihren Zusätzen verzeichneten Opfer aufgenommen und also bei der Revision nicht auf einen a.410–405/4 revidierten Code, sondern auf den vor 410 gültigen Code zurückgegriffen werden sollte³, so wird mit dieser Bestimmung nicht nur die Vermutung, daß die 410–405/4 revidierten Gesetze nicht mehr publiziert worden seien, bestätigt, sondern es ergibt sich obendrein, daß auch das Manuskript mit dem revidierten Code nicht mehr greifbar gewesen sein kann.

Die Gesetzesrevision vom Jahre 403 erwies sich also als notwendig, weil die Ergebnisse der Gesetzesrevision vom Jahre 410–405/4 infolge der Kriegs- und Revolutionswirren vernichtet worden waren.

Mit dieser Feststellung ist aber auch die Datierung des Code R gegeben. Die Tatsache, daß

1. die a.410–405/4 revidierten Gesetze nicht mehr publiziert,
 2. a.403 alle Gesetze ohne Rücksicht auf den bereits bestehenden Code R erneut revidiert und aufgezeichnet wurden,
 3. bei der Revision im Jahre 403 nicht der Code R, sondern der vor 410 gültige Code zur Grundlage des neuen Code gemacht,
 4. der Code R a.403 zerstört wurde,
- weisen darauf hin, daß es sich bei dem Code R um die „μεταγραφὴ τῶν παλαιῶν νόμων“ durch die Dreißig Tyrannen, die „διεφθαρμένοι νόμοι“ handelt. Hervorgegangen sein dürfte dieser Code der Dreißig aus einer Revision der im Manuskript vorliegenden a.410 bis 405/4 revidierten Gesetze.

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¹ Zur Dauer der Friedensverhandlungen (Dez./Jan. 405/4 bis März/April 404) vgl. Xen. hell. 2, 2, 10ff.

² Blutrecht: IG. I² 115 = Tod Nr. 87.

³ Lys. 30, 17f. πυνθάνομαι δὲ αὐτὸν λέγειν ὡς ἀσεβῶ καταλύων τὰς θυσίας. ἐγὼ δ' εἰ μὲν νόμους ἐτίθην περὶ τῆς ἀναγραφῆς, ἡγούμην ἂν ἐξεῖναι Νικομάχῳ τοιαῦτα εἰπεῖν περὶ ἐμοῦ· νῦν δὲ τοῖς κοινοῖς καὶ κείμενοις ἀξιῶ τοῦτον πείθεσθαι. θαυμάζω δὲ εἰ μὴ ἐνθυμεῖται, ὅταν ἐμὲ φάσκη ἀσεβεῖν λέγοντα ὡς χρὴ θύειν τὰς θυσίας τὰς ἐκ τῶν κύρβεων καὶ τῶν στηλῶν κατὰ τὰς συγγραφάς, ὅτι καὶ τῇ πόλει καταγορεῖ· ταῦτα γὰρ ὑμεῖς ἐψηφίσασθε. ἔπειτα εἰ ταῦτα νομίζεις δεινὰ, ἦ που σφόδρα ἐκείνους ἡγεῖ ἀδικεῖν, οἳ τὰ ἐκ τῶν κύρβεων μόνον ἔθυσον ... οἳ τοίνυν πρόγονοι τὰ ἐκ τῶν κύρβεων θύοντες...

Zur Interpretation vgl. Oliver a. O.; Miss Jeffery a. O. Letztere begeht jedoch den entscheidenden Fehler, die κοινοὶ καὶ κείμενοι (νόμοι) und die συγγραφὴ mit dem Code vom Jahre 410–405 zu identifizieren statt mit den νόμοι περὶ τῆς ἀναγραφῆς. Zur Bedeutung von συγγραφὴ vgl. Busolt-Swoboda, Griech. Staatskunde 459ff.

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